Regulatory Impact Statement: Improving rehabilitation, reintegration, and safety outcomes in the corrections system

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Coversheet

Purpose of Document	
Decision sought:	Cabinet agreement to final policy decisions for a Corrections Amendment Bill, 2023
Advising agencies:	Department of Corrections
Proposing Ministers:	Minister of Corrections
Date finalised:	30 November 2022

Problem Definition

This regulatory impact statement considers a package of options for legislative amendment to the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations). The options relate to seven discrete areas where legislative change is necessary to enable best practice operations, and two sets of proposals to support strategic change. The strategic proposals will also have tangible outcomes for the operation of the corrections system.

These problems have accumulated in recent years. The environment Corrections operates in has changed to respond to the increasingly complex people that we manage, and in response to improvements in rehabilitative best practice. We have not identified fundamental problems with the Act, so although a range of changes are proposed, we have not recommended a fundamental review of the Act.

Executive Summary

This RIS analyses nine areas for change that will largely impact the operation of the 18 prisons that are governed by the Act.

While in most cases operational solutions were considered, the prescriptive nature of the Act means that legislative solutions are recommended as operational solutions alone will not achieve our objectives.

Impacts on different population groups

Māori are overrepresented in prison, making up 54% of the prison population as of 31 October 2022. This means that Māori will be impacted more than other groups by the proposals and will benefit from improved prison safety, and rehabilitation and reintegration improvements.

Our options analysis also identifies impacts on groups such as transgender or intersex prisoners, particularly in section F. Wider use of body imaging technology in place of more invasive search methods will improve their wellbeing.

Ultimately, better rehabilitation outcomes will contribute to reduced reoffending rates and improved prison safety, supporting public safety and leading to fewer victims of crime.

Public consultation led to refinements of our proposals and the removal of some problems and options

Public consultation in August and September 2022 resulted in almost 200 responses to a survey and 57 written submissions. We also held hui with iwi partners and key stakeholders and sought feedback from prisoners via two workshops with seven men at Christchurch Men's Prison and six women Christchurch Women's Prison.

We used feedback from public consultation to refine our proposals, including discounting some options.

The proposals in this RIS relating to non-lethal weapons were not publicly consulted on as they are a later addition to the package of proposed amendments, considered in response to findings from the High Court in *Cripps v Attorney-General*. However, where public consultation or recent consultation with key partners and stakeholders is relevant for these proposals, we have drawn on this to inform our analysis.

The proposals respond to the changing environment in the corrections system

Proposals A-C and F-I in this RIS respond to changes in the corrections environment, including high levels of violence and aggression in prisons, and the rise and prominence of transnational organised crime and violent extremism. Proposals D and E respond to the changes taking place guided by Corrections' strategic direction, *Hōkai Rangi.*

Summary of proposals in Sections A to I

Sections A – I set out relevant subject-specific context, describe the problem definitions, analyse options including their costs and benefits, and discuss how recommended options will be implemented and reviewed.

Section A: monitoring and gathering information

We propose to modernise and future proof the Act to respond to changes in technology and anticipate future technology. The changes will also better ensure transparency around what prisoner information and communications can be monitored and how they can be used for intelligence purposes to support the good order and safety of prisons.

Our proposed legislative amendments would provide specific powers to monitor different types of prisoner communication, such as written or oral communications, and in-person visits. They also relate to using wider government expertise to assess communications, enabling the use of technologies such as artificial intelligence, clarifying how long information can be retained for, and enabling information from different sources to be cross-referenced to better analyse risks over time.

Public consultation highlighted that monitoring should be targeted and ensure we do not seek broad surveillance powers. The Office of the Privacy Commissioner stated that Corrections would need to demonstrate the justified purpose for collection of information. We have refined our proposals to ensure that monitoring would only happen when necessary and justified and we have proposed additional limitations on monitoring in-person visits and the use of technology such as artificial intelligence.

Costs and benefits

The greatest impact will be experienced by prisoners and their families. Prisoners will experience benefits in terms of improved prison safety and greater transparency about how their personal data will be used and managed. However, their privacy will be impacted to a greater degree and for that reason we have proposed restrictions and safeguards on the new powers.

Implementation will have costs to develop practice guidance and communications for staff and prisoners to understand the changes. These costs will be met from within baseline funds as they are part of business as usual activity. Over time if Corrections chooses to adopt new technologies such as artificial intelligence, it will do so out of baseline funds.

Section B: ensuring the internal disciplinary processes in prison are effective

Internal disciplinary processes in prisons hold prisoners to account for their misconduct. Our objective is to ensure that these disciplinary processes are effective, support natural justice, and support improved behaviour.

Four legislative amendments are recommended to better address disciplinary issues in prison in a more effective manner:

- enabling suspended penalties to be imposed, to incentivise good behaviour
- making it an offence to incite others to commit disciplinary offences, to fill a gap that currently exists in what constitutes an offence
- allowing disciplinary hearings to proceed in the absence of the accused prisoner if they refuse to attend, and where the Visiting Justice or Adjudicator does not consider it is contrary to a just hearing to proceed, and
- ensuring technology can be used for remote hearings where in-person hearings are not practical or appropriate.

Following consultation, we removed a number of proposals that would have adversely impacted prisoners' access to justice such as reducing the timeframe for appeals and increasing powers for Adjudicators.

Costs and benefits

Improvements to the timeliness and effectiveness of the disciplinary system will build credibility in the system among staff and prisoners, improve conduct, and potentially reduce the frustrations and stress across sites that inhibit safety and oranga/wellbeing.

We will develop communication materials to describe the changes and what they mean for affected groups as part of implementation. There will be one off financial costs for implementation to provide communications and guidance, including training for hearing Adjudicators and Visiting Justices. These costs will be met from within baseline funding as they form part of business as usual activity.

Section C: clarifying processes for the authorisation and use of non-lethal weapons

We propose amending section 85(3) of the Act to require the Minister to consider certain operational information relating to the management of health and safety impacts when deciding whether to authorise new non-lethal weapons in the Regulations. We also propose that the Regulations be updated to include some of the specific health and safety procedures that must be followed when each different non-lethal weapon is used.

These proposals respond to recent litigation in the High Court relating to the use of pepper spray on prisoners.

Costs and benefits

The proposals will have minimal impact on affected parties in the short term, as the proposals shift existing operational policies into the Act and Regulations to give more assurance and transparency about the use of non-lethal weapons.

There are no direct financial costs from the proposal other than updating practice guidance and communications to describe the change to impacted groups, which will be met from within baseline funds.

Section D: improving long-term outcomes for Māori

Our objective is to improve the rehabilitation and reintegration outcomes of Māori in the corrections system and assist Māori and their whānau to achieve their full potential. We also seek to ensure that the Crown's Tiriti o Waitangi / Treaty of Waitangi (te Tiriti) obligations to Māori are clearly defined in a corrections context. Submitters supported our preferred approach to introduce a package of changes to the Act that would include tangible requirements for how the corrections system delivers better outcomes for Māori by including:

- a reference to te Tiriti in the Act
- three new Corrections principles that are derived from te Tiriti principles
- requiring the Department of Corrections to maintain a Māori strategy
- ensuring that Māori across the corrections system can access cultural activities
- providing health services within prisons built on kaupapa Māori approaches and wider health sector principles
- providing mātauranga Māori as part of the provision of education programmes in prison, and
- better enabling whānau, iwi and hapū to be involved in prison placement decisions, so far as appropriate, reasonable and practicable.

Costs and benefits

There are not expected to be substantive additional financial costs for implementation in the short term, as these proposals in many cases support operational changes that are already underway. However, these changes could lay the foundation for future changes guided by the strategic direction of *Hōkai Rangi,* and there may be longer term costs associated with the recommended options. Guidance and training for staff about what these legislative provisions mean for their roles will be developed. Benefits will primarily be experienced by Māori prisoners and their whānau but shifts to offer programmes that focus on wellbeing and te ao Māori approaches will benefit all prisoners.

Section E: a ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative non-offence focused programmes and services

This proposal is to amend the Act and Regulations to enable remand accused and convicted prisoners to mix for specific, limited programmes and cultural events relating to kaupapa Māori, religion, education and therapeutic programmes, when it is not possible to run two parallel streams for practical or therapeutic reasons.

This will support Corrections to prioritise the development of non-offence focused programmes and services that are aimed at delivering the best outcomes for prisoners. Remand accused prisoners will have to consent to the mixing, and programmes and services will be carefully designed to support the needs of convicted prisoners too.

Costs and benefits

Overall, these changes will have very minor impacts as they will have limited application. Costs for updating practice guidance to support programme and service delivery to understand how and when to use the new powers will be met from within baseline funding. The impacts of the changes themselves will be most beneficial to a small group of prisoners, most likely those who are accused and on remand for longer than average periods of time. There is also a risk to our international reputation from this change,

however, we have designed the preferred option in a way that we consider aligns with international obligations.

Section F, G, H, and I: miscellaneous amendments to legislation to assist day-to-day operations

Problem F: enabling more use of body imaging technology to support dignity and wellbeing of prisoners

Section F proposes that the Act is amended to enable body imaging scanners to be used as an alternative to rub-down searches for prisoners on entry and re-entry to prison. Body imaging scans are a less invasive way of searching a prisoner that protects their wellbeing and dignity and is preferred by prisoners at the locations where it has been trialled.

We also propose to amend the Act to specify that:

- scans must be deleted within 24 hours to protect the privacy of prisoners, and
- transgender and gender diverse prisoners can nominate whether a male or female officer will conduct a search on them in prison or view any of their scanning images.

We did not consult on the option related to the sex or gender of the person conducting a search, but developed it in response to submissions about privacy and dignity from groups such as Intersex Aotearoa, and after reviewing wider submissions in discussion with operational staff. The proposal is in keeping with changes that Parliament has agreed to for the Births, Deaths, Marriages and Relationships Registration Act 1995.

Problem G: the current legislative authority for the use of body temperature scanners is unclear

A specific statutory power would be implemented in the Act allowing Corrections to activate, where necessary and justified, body temperature scanning for prisoners, staff and visitors when they enter or re-enter a prison. Body temperature scanners would only be able to be used where there was a necessary and justifiable health risk for doing so, such as a regional outbreak of an infectious disease such as COVID-19, and would need to be authorised by the Prison Manager. The body temperature image would be deleted after no more than an hour.

Section H: updating provisions relating to case management plans for prisoners

Section H proposes that provisions in the Act are amended to enable a more flexible use of the Act and the Regulations to support changes in best practice for the development of rehabilitation and reintegration plans for prisoners. This includes clarifying when plans must be created and reviewed by Case Managers.

Problem I: a secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

Section I proposes amendments to the Act to enable information sharing with Inland Revenue to ensure transparent and accountable processes are in place for the sharing of information relating to child support payments, student loans, and the detection of fraud.

Costs and benefits

The body imaging proposals would have estimated travel costs of up to $20,000 to deliver training to staff at prison sites. Over time, purchasing body imaging scanners for the 14 prisons that do not have them would cost $4.9 million; however, these scanners are optional so their roll out would be phased over time as funding was available.

The other proposed miscellaneous changes have low costs to update practice guidance and undertake some training for staff to implement the changes, which would be funded from within baselines.

Limitations and Constraints on Analysis

There are some gaps in the quality of the data and evidence in some cases

The problem definitions relating to our recommendation that the Act be updated to enable more effective monitoring of prisoner communications and activities for intelligence purposes includes some examples of scenarios where this would be beneficial. As some of the experiences that our staff have had are highly confidential and cannot be disclosed under current legislative provisions, they have not been included in the problem definitions.

As noted, the options relating to non-lethal weapons were not part of the wider public consultation, but we have had targeted engagement on a related regulatory change that was enacted earlier in the year through the Corrections Amendment Regulations 2022, and are working to give effect to a High Court judgement that recommended a similar change.

The engagement undertaken with prisoners was limited to two sites, due to constraints on staff resourcing limiting the number of sites that had capacity to facilitate workshops with prisoners. As the consultation was public, prisoners did have an opportunity to submit and some of those people who submitted spoke of family with lived experience.

We anticipate that current trends in the prison population (discussed in the context section below) would continue under the status quo and many of our changes are aimed at addressing these trends. These include increasing violent extremism and impacts from transnational organised crime, high levels of violence and aggression in prisons, ongoing Māori overrepresentation in the corrections system, and a growing remand population.

Responsible Manager(s) (completed by relevant manager)

Marian Horan

Manager, Corrections Policy

Department of Corrections/Ara Poutama Aotearoa

30/11/2022

Quality Assurance (completed by QA panel)

Reviewing Agency:	The RIA was assessed by a panel made up of representatives from the Department of Corrections, Ministry of Justice, New Zealand Police, and Oranga Tamariki
Panel Assessment & Comment:	The panel has assessed the majority of the RIA as meeting the criteria with the exception of two of the miscellaneous sections which are discussed below, along with the following comments. The panel assessed Section D on improving outcomes for Māori as meeting the RIA criteria. However, the panel noted that Corrections may face challenges when it comes to the implementation of the options in relation to health and education as Corrections is not the only agency funding and delivering those

service in prisons. These provisions will require careful drafting to ensure they are practical to implement and have appropriate regard to this consideration.

The panel assessed Section E on the mixing of remand accused and convicted people as meeting the RIA criteria. However, the panel noted that if the option to allow mixing in limited circumstances was to go ahead this could be seen as a breach of Article 10(2) of the International Covenant on Civil and Political Rights which does come with a degree of risk to New Zealand's international reputation. This is somewhat mitigated by the limitations that are proposed, for example having separate accommodation and mealtimes. This risk is balanced against the remainder of New Zealand's international obligations in regard to the treatment of prisoners providing a counterbalance, including the need to provide cultural activities and healthcare to people in prison. Overall, despite these risks, the panel was convinced by the RIA and the recommended option being the best approach to deliver against the objectives.

The Panel assessed Section G on body temperature scanners as partially meeting the RIA criteria. The circumstances in which body temperature scanning can be used will determine whether this search is a justifiable encroachment on human rights. Those circumstances are not well explored. Otherwise, the case for being able to scan everyone's body temperature before entry to prison is convincing.

The panel assessed Section I on information sharing with Inland Revenue as partially meeting the RIA criteria. The case for preferring a bespoke amendment to the Act over an Approved Information Sharing Agreement is not sufficiently convincing. Nevertheless, the assessment establishes that a bespoke amendment equally fulfils the objectives.

While the panel assessed each of the sections individually, it was noted that there was limited consultation with prisoners which is not a representative sample and not statistically significant. However, it was noted that the wider public consultation meant people had a chance to submit if previously in prison, or they had whānau in prison. On balance it was the panel's view that while this limited consultation with people with lived experience placed constraints on the analysis, it did not negatively impact the analysis overall.

Context: The corrections system has evolved and we are considering changes to enable best practice operationally

What is the context behind the policy problem and how is the status quo expected to develop?

The corrections system includes 18 prisons across the country and the Department of Corrections manages people on sentences and orders in the community

1. There are 18 prisons and corrections facilities across Aotearoa (15 for men and three for women) for people who have either been sentenced to a term of imprisonment or have been remanded in custody while they wait for their case to be heard. Serco operates one of these prisons, Auckland South Corrections Facility, on contract and is bound by the same legislative framework as the Department of Corrections/ Ara Poutama Aotearoa (Corrections).
2. While our prisons vary in size and specification, each of them operates under the same set of rules and must meet a certain standard that is set out in the Corrections Act 2004 (the Act) and the Corrections Regulations 2005 (the Regulations).
3. Corrections is also responsible for managing people on sentences and orders in the community. Most of the changes discussed in this RIS relate to legislative change that impacts the operation of prisons.

The Corrections Act 2004 is the primary piece of legislation for the corrections system

4. The Act sets out the framework for how the corrections system operates. The purpose of the Act is to improve public safety and contribute to the maintenance of a just society, by
    - ensuring that sentences and orders are administered safely, securely, humanely and effectively
    - providing for corrections facilities to be operated in accordance with rules set out in the Act and Regulations
    - assisting in the rehabilitation of offenders and their reintegration into the community through the provision of programmes and other interventions, and
    - providing information to the courts and the New Zealand Parole Board to assist them in decision-making.
5. Section 6 of the Act specifies a set of principles that guide the corrections system. The first of these states that the maintenance of public safety is the paramount consideration in decisions about the management of people under Corrections' control or supervision. Other principles include, but are not limited to:
    - treating people fairly and not more restrictively than necessary
    - taking into account the individual circumstances of people Corrections manages
    - involving the person's family in decision making and encouraging and supporting contact with their family.
6. The legislative framework that Corrections operates within also includes the Parole Act 2002, the Sentencing Act 2002, the Bail Act 2000 and associated regulations.

Corrections must also operate in accordance with human rights legislation and international obligations

7. While prisoners are subject to justified limitations of their rights due to their detention, Corrections is responsible for providing fair treatment and administering sentences in a way that is no more restrictive than necessary.

8. Corrections must adhere to New Zealand's human rights legislation and our international obligations. For example, the Act is based on, among other things, the United Nations Standard Minimum Rules for the Treatment of Prisoners, known as the Mandela Rules.

9. There are also several other international instruments New Zealand is party to that are relevant to or incorporated in Corrections' legislative framework. In particular, the International Covenant on Civil and Political Rights (ICCPR) is a binding international agreement covering human rights and a range of protections including equality before the law, freedom from ill-treatment and arbitrary detention, and the right to life and human dignity. The United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) also provide additional considerations for the needs of women.

10. Important concepts, such as how the state exercises power and the relationship between the state and individuals, are included in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. It is important that other New Zealand legislation is consistent with these pieces of legislation, particularly when the rights of an individual are affected, such as when a person is detained in prison.

11. NZBORA recognises that there are situations where limiting rights and freedoms may be appropriate if they can be justified in a free and democratic society. When considering changes to the Act, impacts on human rights must be carefully accounted for in Corrections' purpose of improving public safety.

12. Other legislation that Corrections must operate in accordance with includes the Public Service Act 2020, which sets out public service principles and that the role of the public service includes supporting the Crown in its relationships with Māori, and the Privacy Act 2020.

There are internal and external oversight and accountability mechanisms for the corrections system

13. Oversight and accountability of Corrections' activities is provided for by the internal but independent Office of the Inspectorate (the Inspectorate), as well as externally by the Ombudsman.

14. The Inspectorate is guided by the Inspection Standards, which are derived from the Mandela Rules and His Majesties Inspectorate of Prison Expectations (the United Kingdom's equivalent inspection criteria). The Inspection Standards also include gender-responsive standards for women and transgender prisoners. In addition to prison inspections, the Inspectorate investigates the deaths of people in Corrections' custody and carries out special investigations as directed by the Chief Executive.

15. Prisoners also have the right to make complaints and the Inspectorate investigates these.

16. The Ombudsman is one of four National Preventive Mechanisms (NPMs) in New Zealand that monitor the conditions of detention and treatment of detainees and makes recommendations for improvement. This gives effect to the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading

Punishment (OPCAT). The Chief Ombudsman can enter and inspect prisons at any time and provide recommendations for improvements to the conditions of prisons or the treatment of prisoners.

We are considering legislative change now as the environment we operate in is changing and the people we manage are increasingly complex

17. Prompted by the changes identified in the corrections system and the risk profile of prisons discussed below, in-conjunction with operational teams, we identified areas where the legislative framework was not supporting the Department to respond to these changes or enable best practice.

18. We did not identify fundamental problems with the Act or the broader legislative framework for the corrections system. However, we did identify a range of discrete issues that have accumulated in recent years, which hinder our operations and the introduction of shifts in best therapeutic practice.

19. This RIS therefore considers a package of options for change that respond to the changing prison context and support the strategic direction of the Department under *Hōkai Rangi* (as outlined below). It is necessary to progress the recommended options in a timely manner to enable us to deliver the best services that we can to prisoners, their whānau, staff, and communities.

New Zealand's prison population has been declining since 2018 but Māori continue to be overrepresented

20. New Zealand's prison population peaked at 10,820 prisoners in March 2018. This has dropped to a population of approximately 7,975 as of 31 October 2022. The men's prison population is approximately 7,500 and the women's prison population is approximately 480.

21. As of 31 October 2022, 53% of prisoners identified as Māori: 52% of men in prison identified as Māori and 65% of women in prison identified as Māori.

22. The number of Māori in prison has been falling for the last four years, along with the general prison population. However, the Māori prison population has dropped at a lower rate, resulting in Māori making up a larger proportion of the prison population.[1]

23. As of 31 October 2022, 42% of the total prison population were on remand. This was higher for women, with 51% of women in prison on remand.

24. The number of younger prisoners has been falling continuously since 1980. In that year, 64% of prisoners were under 25 years old; by June 2022 this had fallen to 10%. During the same time, the proportion of prisoners under 20 years old fell from 29% to just 1.2%.[2]

Violence and aggression in prison is a challenge that Corrections is responding to

25. Corrections manages some of New Zealand's most difficult and challenging people, many of whom have unmet high and complex needs, and histories of violence and anti-social behaviour. Many of the people our staff work with can behave unpredictably and act without warning. Over 80% of the prison population have convictions for violence in their offending histories. In 2021/22, the proportion of the prison population with a gang

[1] Justice Sector Long-Term Insights Briefing public consultation document, 2022.

[2] Justice Sector Long-Term Insights Briefing public consultation document, 2022.

affiliation was 35%. Gang affiliation is a known predictor of violence and gang members are over-represented in acts of disorder and violence in prison.[3]

26. During 2021/22, there were 15 unique incidents of serious prisoner-on-staff assaults resulting in harm to 17 staff members.[4] In the same period, there were 24 incidents of serious prisoner-on-prisoner assaults, in which 24 people were harmed.[5]

27. While it is not possible to eliminate the threat of violence in prison entirely, we are constantly working to provide the safest environment possible for staff and prisoners.

28. In May 2021, Corrections agreed to a Joint Action Plan on Reducing Violence and Aggression in Prisons (Joint Action Plan) with the unions representing custodial staff, the Public Service Association (PSA) and the Corrections Association of New Zealand (CANZ). One of the Joint Action Plan workstreams is about ensuring that prisoners are held responsible for their actions, such as assaults on staff members.

The criminal landscape in New Zealand is changing, which impacts the risk profile of people managed by Corrections

29. In recent years, there has been an increase in the use of technologies that can be used to conduct criminal activity. In New Zealand and internationally, organised crime groups are becoming more sophisticated. This has been demonstrated most prominently with the rise of transnational organised crime (TNOC) groups and individuals with links to Mexican Cartels and European Organised Crime, and the emergence of new gangs (Comanchero MC and Mongols MC).

30. In prisons, relationships between gangs and gang members are complex and varied, and Corrections staff expend significant resources placing prisoners with gang affiliations in units that will better support a safe prison environment.

31. The complex nature of gang relationships influences the development of traditional, and the creation of new, alliances and rivalries within prison units. Within this complex environment, gang tensions flare up intermittently, often resulting in conflict and the use of violence.

32. The rise and prominence of violent extremism has resulted in an increase in the number of violent extremist individuals in Corrections' management. Corrections currently manages and monitors a number of individuals of concern, including some who have been imprisoned for violent extremist-related activity.

Corrections supports the wider intelligence sector domestically and internationally

33. Corrections has obligations to support wider Government efforts in a number of areas, such as the National Security Intelligence Priorities, the Government's Transnational Organised Crime in New Zealand Strategy, and New Zealand's Countering Terrorism and Violent Extremism Strategy. Our key responsibility is in ensuring the maintenance of a safe and just society through the safe and secure management of sentences, and

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[3] *Corrections Annual Report 2021/22*, p. 54.

[4] Serious assaults are acts of violence that include one or more of the following: bodily harm requiring medical intervention by medical staff followed by overnight hospitalisation (beyond initial assessment or medical observation) in a medical facility; bodily harm requiring extended periods of ongoing medical intervention; or sexual assault of any form and degree where Police charges have been laid.

[5] *Corrections Annual Report 2021/22*, p. 54.

sharing intelligence holdings with Police, New Zealand Security Intelligence Service and other partner agencies to support their function.

Corrections has a number of tools available to manage the safety and security of prisons

34. Corrections is enabled by the Act to monitor mail and phone calls of prisoners, which can support with detecting threats to the safety and security of the prison, including prisoners and staff. Options to further strengthen and clarify what communications Corrections can monitor and how it can use information it gathers for intelligence purposes are discussed in **Section A** of this RIS.

35. Prisoners who commit criminal activity, such as serious assaults, can be referred to Police for prosecution. Corrections also has an internal disciplinary process, which is one way in which prisoners are held to account for any misconduct where criminal charges are not being pursued or the misconduct does not constitute criminal activity. Options to improve the timeliness and effectiveness of the disciplinary process are discussed in **Section B** of this RIS.

36. The use of force, including the use of authorised non-lethal weapons, is also enabled by the Act if a Corrections Officer or staff member has reasonable grounds for believing that the use of physical force is reasonably necessary:

    - in self-defence, in the defence of another person, or to protect the prisoner from injury
    - in the case of an escape or attempted escape
    - in the case of a Corrections Officer:
        i. to prevent the prisoner from damaging any property, or
        ii. in the case of active or passive resistance to a lawful order.

37. No more physical force than is reasonably necessary in the circumstances may be used. The Act and Regulations set out additional details for the authorisation and use of coercive powers and non-lethal weapons.

38. Options to strengthen the legislative framework for authorising non-lethal weapons are discussed in **Section C** of this RIS.

Corrections' operations will continue to evolve guided by the strategic direction of our current strategy, *Hōkai Rangi*

39. Māori are overrepresented in New Zealand prisons and in reoffending rates, and in 2017, the Waitangi Tribunal found that the Crown, through Corrections, has a "responsibility to reduce Māori reoffending in order to reduce current inequities between Māori and non-Māori reoffending rates". Te Tiriti creates a basis for protecting and acknowledging Māori rights and interests. Te Tiriti establishes the respective rights and duties that define Māori/Crown relations.

40. *Hōkai Rangi,* launched in 2019, was developed with Māori to address the overrepresentation of Māori in the corrections system. *Hōkai Rangi's* strategic approach is focussed on the whakataukī *Kotahi anō te kaupapa; ko te oranga o te iwi* (there is only one purpose to our work; the wellness and wellbeing of people).

41. A key goal is reduce harm to prisoners and shift to an approach that is more responsive to the needs of the individual and their whānau, using te ao Māori approaches. This means we are innovating and finding alternative ways of doing things, and working with Māori to achieve better rehabilitation outcomes for them and

all people we manage. When we work in new ways to achieve those outcomes, our workforce and the public will be safer as a result.

42. Guided by this focus on wellbeing we are establishing new therapeutic models of care with mana whenua to develop new services informed by mātauranga Māori across the system. For example, the Waikeria Prison redevelopment includes a new mental health and addiction service for the region that will be delivered from a purpose-built 96-bed mental health unit called Te Wai o Pure. The new operating model was developed with mana whenua and the District Health Board and has a vision strongly focused on wellness and wellbeing, and a focus on individual care.

43. We are also establishing Māori Pathways programmes at three prison sites: Hawke's Bay Regional Prison, Northland Region Corrections Facility, and Christchurch Women's Prison. These programmes are designed with iwi, hapū, and whānau Māori and support the corrections system to be more effective by using kaupapa Māori and whānau-centred approaches to managing prisoners.

44. **Section D** of this RIS analyses options to further support improved rehabilitation and reintegration outcomes for Māori in the corrections system.

Corrections publicly consulted on options for six weeks

45. Public consultation ran for six weeks from 16 August to 23 September 2022. A discussion document was published on the Corrections website and an online survey was available for stakeholders to provide their feedback. The survey included a summary of proposals and a shorter set of questions based on the discussion document and was open for anyone to complete. Written submissions were also requested and those that were received were generally more detailed and responded to the discussion document.

46. Corrections proactively emailed over 500 partners and key stakeholders to inform them about consultation and to offer to meet with them.

47. We received 195 survey responses and 57 written submissions. Approximately half of written submissions were provided by organisations including:

    - agencies and organisations such as the New Zealand Parole Board, Human Rights Commission, the Ombudsman, Office of the Privacy Commissioner and the Health and Disability Commissioner
    - iwi partners and Māori organisations, such as Ināia Tonu Nei
    - Serco
    - non-government organisations such as the Salvation Army and Anglican Action
    - sector organisations such as People Against Prisons Aotearoa and the Howard League
    - feminist groups such as Women's Liberation Aotearoa, and
    - other interested organisations such as the New Zealand Law Society and Professional Association for Transgender Health Aotearoa.

48. We met with a variety of individuals and groups. This included hui in September and October 2022 with:

    - Ngāpuhi, Ngāti Rangi and Ngāti Hine in Kaikohe
    - Te Rūnanga o Ngāti Whātua and Te Uri Hau Trust

- Intersex Aotearoa
- Kaiwhakamana in Hawke's Bay
- Speak up for Women
- Mana Wāhine Korero
- Lesbian Action for Visibility Aotearoa New Zealand
- The Human Rights Commission
- The Office of the Ombudsman, and
- Serco (who run Auckland South Corrections Facility).

49. We also sought feedback from prisoners via a workshop with seven men in the Matapuna Unit at Christchurch Men's Prison and a session with the six women on the wāhine panel at Christchurch Women's Prison.[6] Engagement with prisoners was limited due to staffing shortages at a number of sites placing pressure on their capacity to support additional workshops.

50. The Salvation Army also submitted the results of a survey with 15 clients who had previously been in custody. In addition, 53(b)(i) engaged with a group of men at Northland Region Corrections Facility on the proposals in Section D of the RIS.

51. The proposals in this RIS related to clarifying processes for the authorisation and use of non-lethal weapons were not publicly consulted on as they are a later addition to the package of proposed amendments. However, where public consultation or recent consultation with key partners and stakeholders is relevant for these proposals, we have drawn on it. The proposal for transgender and gender diverse people to be able to nominate whether a male or a female staff member searches them was added after public consultation as a result of feedback we received from groups such as Intersex Aotearoa who talked to us about the importance of language being inclusive and enabling choice.

Overarching objective

52. The overarching objective for this package of options is to enable best practice operationally in the corrections system, supporting the strategic direction of the Department, and responding to the evolving context in the corrections system.

Criteria

53. We have assessed all of the options in this RIS against six criteria:

Complies with human rights obligations	The extent to which the option supports the rights contained in NZBORA, the Human Rights Act, the Privacy Act, the Mandela Rules and other international obligations. NZBORA is the domestic articulation of our international obligations and while the Mandela Rules are non-binding, they are referenced in the Act.
Transparency and accountability	The extent to which the option supports transparency about what powers Corrections can exercise and provides accountability and review mechanisms of how these powers are used.

[6] Wāhine panels are run at the three women's prisons to facilitate women in prison being able to share their views and give feedback on their management within prisons.

Practical to implement and responsive	The ease of implementation and the extent to which the options will be able to adapt to changes over time, such as new technologies, allowing for ongoing innovation and shifts in best practice.
Contributes to better outcomes for Māori	The extent to which the option will tangibly improve outcomes for Māori in the corrections system, and contribute to Corrections supporting the Crown to meet its responsibilities under te Tiriti.
Supports oranga/wellbeing of the people we manage	The extent to which the option will support the oranga/wellbeing of prisoners. In a Corrections context, this could include improvements to conditions for prisoners, for example greater opportunities to participate in activities, a greater sense of privacy, and options that will have a positive impact on mental health.
Contributes to safety	The extent to which the option contributes to safety, which could include the safety of prisons, including staff and prisoners, or public safety, which is a purpose of the corrections system.

54. Our criteria were largely supported by submitters where feedback was provided on them during public consultation. Three submitters recommended that there should be an explicit te Tiriti criteria. We reflected on that advice and consider that "contributes to better outcomes for Māori" is a tangible way for us to assess our te Tiriti obligations and align with the strategic direction of *Hōkai Rangi*, but have amended the criteria above to support us to consider how each proposal might deliver on te Tiriti principles established in jurisprudence.

55. As part of this, we want to understand the impacts on Māori of each proposal. As the Waitangi Tribunal noted in its report *Tū Mai te Rangi!,* some of the initiatives that Corrections has implemented in the past produced positive results across the prison network as a whole, but increased the overrepresentation of Māori in the prison population.

56. Our options have been analysed against the criteria using the following scoring method:

Key for options analysis:	
++	much better than doing nothing/the status quo/counterfactual
+	better than doing nothing/the status quo/counterfactual
0	about the same as doing nothing/the status quo/counterfactual
-	worse than doing nothing/the status quo/counterfactual
- -	much worse than doing nothing/the status quo/counterfactual

Section A: Monitoring and gathering information

Terminology used in this section

Intelligence: Intelligence is the product of an analytical process that evaluates information collected from diverse sources, integrates relevant information to form a clear understanding of a problem or environment, and interprets that understanding so that decision makers can decide what action to take. Intelligence draws conclusions and inferences from facts and patterns. It anticipates future behaviours and identifies trends and risks.

In the Corrections context, this information stems from monitoring imprisoned peoples' communications to detect illegal and covert activity, or other activity that may threaten the safety and security of prisons. Being able to draw conclusions and inferences from this information allows us to reduce harm and keep prisoners and the wider community safe.

Intelligence purposes: is defined here as the provision and assessment of information to prevent harm, identify risk, and detect, deter, and disrupt unlawful, harmful, or illicit activities.

Harmful activity: Harmful activity can refer to things such as threats, intimidation, stand overs and assaults.

Illicit activity: Illicit activity can refer to contraband introduction, drug dealing from within prison, extortion, or coordination of illegal activity from within prisons, for example gang instructions.

Withholding mail: not delivering mail to or from prisoners.

Context

What is the context behind the policy problem and how is the status quo expected to develop?

Corrections can monitor and gather information from some prisoner communications and activities

57. Corrections has the ability to monitor some communications and gather information on prisoners. This monitoring helps to identify risks among the prison population, which in turn allows us to promote safety and reduce harm. Without appropriate monitoring, risks may go undetected, which can lead to increases in illicit and harmful activity. Our actions in identifying and addressing these risks need to be balanced with the right to privacy and ensuring we are not imposing more restrictions than necessary on prisoners.

We record all prisoner phone calls and monitor some of these

58. The Act empowers Corrections to monitor phone calls for the purpose of detecting threats, covert activity, and activity that undermines general law or has the potential to breach the safety of our sites.

9(2)(g)(i) [redacted]

We examine some prisoner mail

60. We are able to open mail for the purposes of determining whether it should be withheld for reasons outlined in the Act, such as detecting immediate threats, contraband, or objectionable material. Since 2019, Corrections has reviewed more than 12,000 pieces

of mail for withholding, which represents approximately 10% of the mail received since 2019.

61. Our ability to open and read mail can only be undertaken to determine whether or not it should be withheld. The Act does not allow us to use the information obtained from prisoner mail for any other purpose.

62. Legal mail and phone calls, including to Members of Parliament, legal representatives, and others acting in an official capacity are not subject to monitoring, nor are private visits.

63. The Act is silent on other forms of communication, such as email (although operationally this is treated as mail and can be monitored), internet services, and in prison conversations.

Corrections also gathers information from non-communications sources

64. During the course of their jobs, frontline staff gather a range of information through general duties, which can indicate the presence of threats, covert activity, or the potential for harm in prisons. The Act is silent on most of these information sources and how they might be used for intelligence purposes.

The management of information gathered by Corrections is guided by operational policies and external legislation

65. The Privacy Act has general provisions for the Crown's management of information alongside some provisions in the Corrections Act.[7] We are also subject to maintaining records in accordance with standard business practice under the Public Records Act 2005. Additionally, Corrections follows the information security protocols as outlined by the Government Communications Security Bureau (GCSB). These instruments contain strict guidelines for the storage and management of sensitive information.

66. The Act is silent on the destruction of any prisoner communications except phone calls, which must be destroyed after two years, unless for a specific reason outlined, such as if the recording is needed for evidence in court proceedings.

67. The Act provides for mail and phone calls to be shared with eligible Corrections employees for the purpose of translating languages or codes. This is to identify immediate threats, and in the case of mail, identify if it should be withheld as noted above.

68. Corrections has specific powers to share information and material gathered from prisoner communications with law enforcement, primarily if it directly relates to an offence. Corrections also has provisions governing the general sharing of offender information (such as for social assistance purposes), as well as provisions to draft information sharing agreements. For example, Corrections has an inter-agency sharing agreement with Police through the Gang Intelligence Centre (GIC). There are, however, no legislative provisions specific to the sharing of intelligence information.[8]

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[7] For example, the Corrections Act provides guidance for monitoring and sharing of information from mail (s 103A -110C) and phone calls (s 111 – 122).

[8] However, there is a schedule that covers intelligence sharing in our Memorandum of Understanding with the Police.

Corrections has an intelligence function that provides a proactive response to safety and security concerns

69. The operating model for Corrections' intelligence function has three pillars:

    - accurate interpretation of the operating environment through targeted collection, collation, and analysis of information
    - actionable insight for decision-makers through the delivery of high-quality intelligence products and outputs, and
    - strategic foresight to inform high-level decision making through the provision of timely and predictive strategic analysis.

70. Throughout the last six years, Corrections intelligence staff have responded to changes in the operating environment, which has resulted in a reduced focus on site security activities (assaults, contraband introduction, crime prevention) to focus more on Transnational Organised Crime (TNOC) and violent extremism.

71. Corrections intelligence staff have three key priorities, which align to the Government's National Security Intelligence Priorities (NSIPs).[9] They are:

    - **Harm Reduction**: focuses on understanding the factors that contribute to serious assaults and tensions in prisons, and aims to inform decision makers and assist them to protect people from serious violence and further physical harm.
    - **Transnational and Domestic Organised Crime***:* focuses on proactively identifying and analysing threats to Corrections and New Zealand from transnational and domestic organised crime groups and individuals.
    - **Terrorism and Violent Extremism**: focuses on the detection and understanding of terrorism and violent extremism threats within Corrections that could affect New Zealand.

72. As well as these three priorities, Corrections Intelligence also supports prison site management teams with daily site security activities, such as placement (including segregation) and transfer decisions, decisions relating to temporary releases, and managing general site tensions.[10] Intelligence also feeds into decisions for security classifications, however this process is generally based on behaviour as opposed to risk. As intelligence operates in probabilities, more weight in security classification decisions is given to firm evidence, such as IOMS[11] reports. The majority of classifications are done without intelligence input.

Oversight and accountability mechanisms for intelligence powers are already in place

73. The Inspectorate does not specifically review the work of Corrections intelligence staff, but is empowered to investigate the intelligence function should relevant complaints be made by prisoners, or if the Chief Executive asks for a special investigation to be conducted. For example, the Inspectorate has recently inquired about the work of

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[9] See https://dpmc.govt.nz/our-programmes/national-security-and-intelligence/national-security-and-intelligence-priorities.

[10] For example, Corrections Intelligence can provide advice on where people should be placed to avoid tension if rival gangs are placed in the same unit.

[11] Integrated Offender Management System. This system holds information on people in prison, including reporting of incidents.

Corrections intelligence staff as part of the multi-agency Coordinated Review of events leading up to the attack at New Lynn Countdown on 3 September 2021.

74. The Office of the Privacy Commissioner has also examined various aspects of Corrections intelligence work when complaints have been made, mainly about prisoner access to information that Corrections intelligence staff hold on the prisoner.

What scope will options be considered within?

75. The direct scope of this analysis includes the monitoring, gathering, use, management, destruction, and sharing of communications and information.

76. We are operating within the scope of the purposes and principles of the Act. Because of this, some things are out of direct scope of this review. This includes:

- issues and options beyond the gathering, managing, and sharing of intelligence about prisoner communications; for example, restrictions on communication for control and enforcement are out of scope
- intelligence operations outside prisons in the community, as Corrections does not have the resources to monitor the community, and this is a space for Police to operate in
- options relating to the monitoring of certain communications, such as communications with statutory visitors/lawyers (s 114 sets out certain calls that must not be monitored), privileged information, unauthorised communications (cell phones), and human sources. This is considered an overreach of powers and is not necessary to maintaining the safety and good order of prisons
- criminal or employment investigations of staff, and
- options that are inconsistent with Cabinet's expectations for the creation of new intelligence powers.

77. In addition, there is existing legislative guidance and human rights issues that inform the scope of our options.

There are strict legislative guidelines for developing intelligence powers

78. The legislative guidance available on the expansion or creation of intelligence powers is clear that any amendments to legislation must be clear, enforceable, and justified. This means that powers should be clearly stated and not be so broad as to be overly permissive.

79. Powers should be as inobtrusive as possible to achieve their intended purpose, and specific with clear evidence justifying their use. The Search and Surveillance Act 2012 (SSA) can be used as a starting point when considering the thresholds that must be satisfied for exercising monitoring powers for intelligence purposes:

- there are "reasonable grounds to suspect" the relevant factual situation has occurred (such as a criminal offence)
- there are "reasonable grounds to believe" that evidence will be found, or a particular thing might be achieved.

80. While the SSA provides a starting point for considerations around search and surveillance, it should be noted that the thresholds for 'reasonable grounds' in the Corrections context are different than the settings that apply to the SSA. This is in part because prisoners are already subject to limitations on their rights due to their detention. Additionally, as Corrections is required to administer sentences safely,

humanely, and effectively (a core purpose of section 5 of the Act), there is a need for there to be more oversight of prisoner activity to detect and prevent harmful and illicit activity. Monitoring powers is one way that Corrections is able to fulfil this purpose.

81. For example, the Act provides us with power to check all mail for the purpose of detecting contraband and harmful content, which is much more expansive than powers granted by the SSA. However, we have 'reasonable grounds' to maintain this power as we know that mail is a tool used to conduct harmful and illicit activity.

Any limits on human rights must be justified as reasonable limits

82. New legislation should be consistent with the rights and freedoms contained in NZBORA. If proposed legislation is to limit NZBORA, these limitations must be demonstrably justified as reasonable limits in society. The aim should be to limit rights as little as possible in order to achieve the purpose of the legislation.

83. The government also has a duty to respect the privacy interests of people and ensure that the collection, use and disclosure of information is consistent with those interests. We have an obligation to protect personal information, and ensure that it is not kept for longer than necessary, and is not at risk of being exposed.

Māori data sovereignty needs to be considered

84. In its submission in response to public consultation, the Human Rights Commission described the importance of considering data sovereignty views from a Māori perspective. This position was supported by other public submissions.

85. The options discussed in this analysis are likely to create, collect, and manage data about Māori prisoners. Te Tiriti provides for Māori to have sovereignty over their taonga and places an obligation on the Crown to uphold this. Submitters said that data can be considered taonga and is of strategic value to Māori.

86. In the context of the options outlined below to address our problems, we consider that our options should ensure that there is transparency about how data is collected and held, access to data when requested, and ensure privacy is maintained of data as taonga.

Diagnosing the policy problem

What is the overall policy problem or opportunity?

87. There is an opportunity to modernise and future proof the Act to respond to changes in technology, anticipate future technology, and better ensure transparency about what prisoner information and communications can be monitored and how it can be used for intelligence purposes to support the good order and safety of prisons. This problem is split into two parts, with four sub-problems.

Problem A1: Corrections is unable to effectively monitor prisoner communications and gather information to keep prisons and the wider community safe due in part due to changes in technology

88. Problem A1 has two sub-problems.

Problem A1(a): the Act is unclear on how we can use existing prisoner communications and information for intelligence purposes and the Act has not responded to changing communication methods

89. The provisions in the Act related to monitoring prisoner communications have evolved in an ad hoc manner and refer only to mail and phone calls, and have not responded to changes in technology. As new technology is enabled in the prison environment such

as email and audio-visual options, transparent powers are needed for Corrections staff to understand how and what they can and cannot monitor for intelligence purposes. Without appropriate monitoring, risks may go undetected, which can lead to increases in harmful and illicit activity.

Corrections' current powers to monitor mail and telephone calls are too limited to effectively support the safety and security of prisons

90. Our current monitoring abilities have been too limited to do our job effectively in a number of circumstances. For example, information within mail cannot be used to build up broader intelligence of extremist networks or trends in radicalisation. Confusion exists amongst custodial staff regarding what they can do with prisoner mail for intelligence purposes because the Act is silent on this and staff have no explicit power to gather information that they see in copies of mail that are reviewed for withholding purposes.

91. As an example, a recent mail item passed to Corrections intelligence staff during the withholding exercise involved details of a prison unit where a gang member's cell was located. This information would have been useful for intelligence staff to confirm the gang the individual was affiliated with and that communication was occurring between the individuals, but had to be deleted from Corrections' systems and not used in any way. This type of information is helpful in understanding numbers of a particular gang, ensuring safe placement and preventing tension in prison units.

92. Private visits cannot currently be monitored, and we know from monitoring phone calls that prisoners save discussion about subjects that impact on the safety of the prison environment for discussion in person, as prisoners are aware that these visits cannot be monitored. There may be reasonable grounds to conduct this monitoring in the prison context, where we know people use visits to discuss illicit activity and bring in contraband.

93. These gaps create safety and security risks in the prison environment and the wider community, making it difficult for Corrections to fulfil our purpose of contributing to public safety and prison safety.

The Act is silent on the monitoring of new technologies

94. The Act does not contain provisions relating to the monitoring of new technologies, such as email (operationally this is treated as mail) or video calling. These technologies are becoming more available in prisons, and it is likely that over time people will gain access to regular use of digital technologies. These technologies can be used to conduct harmful or illicit activity, but the Act is silent on if or how these should be monitored. It is important that, to be future focused, the Act contains clear guidance on the monitoring of these new technologies.

There could be more clarity around using other forms of prisoner information that staff gather during BAU activities

95. There is no provision within the Act to use the information gathered in the course of BAU for intelligence purposes. The Act does not give powers to use biometric information, such as pictures of tattoos, for building up information on prisoner networks, prisoners with extremist ideologies, prisoners with gang affiliation, or to share these with other agencies unless it triggers an immediate criminal threat.

96. Additionally, Corrections Intelligence monitors funds moving through the Prisoner Trust Account system. This is a useful indicator of criminal activity, threats, intimidation, and gang activity, yet there is no transparent power in the Act about whether or not this is something that staff can do.

97. For example, Corrections identified that during a seven-month period in 2020 and 2021 a large number of suspicious deposits were made into various Prisoner Trust Accounts of prisoners at one prison. These transactions indicated that a sentenced prisoner had likely been intimidated into transferring funds by multiple prisoners between August 2020 and March 2021, but staff were unable to act on this information.

98. Similar issues apply to the use of open-source information, such as social media or other online portals that contain prisoner information. There have been recent examples where prisoners have obtained phones and posted content to social media. While this information is publicly available, the Act is silent on how it can be used or whether staff should access it or not. It is important to consider whether legislative guidance is needed for this, or if information can be effectively managed at an operational level.

99. This problem is technical in nature and is primarily an issue of lack of clarity over how Corrections can use information for intelligence purposes that we already have access to.

Problem A1(b) Corrections does not always have the staff capability and resources to process raw information in prisoner communications

Staff capability is limited when it comes to languages and coded communications

100. When monitoring mail and phone calls, different languages present challenges regarding translation, because we do not have staff on hand to translate the different languages that are used. The use of symbology and codes is also ever-evolving, both in the violent extremism and transnational organised crime areas, and Corrections staff have limited knowledge and ability to decipher these codes.

101. The Act currently allows for an ‘authorised person’ to monitor phone calls, and an ‘eligible employee’ (someone employed by Corrections) can listen to a phone call for the purpose of interpreting it. A person authorised by the Prison Manager can open and read mail. This means we have to contract in the skills needed for tasks that involve translation and decoding and, as there is a limited pool of experts available, this is often not timely.

Resourcing can limit the scale of prisoner communications that we can monitor

102. Corrections is currently unable to identify all mail that should be withheld due to a lack of resources and the scale of correspondence. Corrections also does not have the resources to monitor all phone calls.

103. The Act does not anticipate how technology could be used to improve monitoring abilities. For example, artificial intelligence (AI) has been developed that is capable of monitoring phone calls without human intervention. The ability to use such technology could enable us to more widely monitor communications for targeted situations, by picking up on things such as key words or three way calling (where an unauthorised person joins a call between a prisoner and a family member or friend). The Act could be clearer on if and how Corrections should have access to this technology.

9(2)(g)(i)

[redacted]

Feedback from public consultation about the problems

The Corrections Act should be fit for purpose and effective

105. Some stakeholders raised concerns around the current legislation, particularly around the lack of clarity with our current intelligence powers. People noted that while the Act was outdated, Corrections still faced the same problems from harmful or illegal activity, and that it is important that our powers are updated to reflect these changes.

"Intelligence collection is a critical element of keeping prisoners, staff, whānau and visitors safe"

106. Submissions highlighted the importance of safety and the role that monitoring prisoner communications and activities plays in this. Approximately 70% of survey respondents agreed or strongly agreed that our inability to effectively monitor is a problem that should be addressed. People felt that "Corrections needs the tools to do its job" and that "the safety of prisoners could be compromised if authorities do not know what's going on".

107. Stakeholders highlighted that in order to implement its purpose of ensuring the safe and secure administration of sentences, Corrections must be aware of any harmful activity taking place across its sites. This is important in providing for the good order of prisons, protecting victims, and preventing further criminal activity.

108. The Human Rights Commission and the Ombudsman submitted that instead of greater monitoring, greater use of dynamic security should be used to create a safe environment. This style of training requires alert staff interacting with prisoners in a positive manner, which in turn allows staff to anticipate and prevent problems before they arise.

"Privacy in the first instance must be protected"

109. While people supported and understood the problem Corrections faces with its current monitoring powers, some stakeholders highlighted the importance of human rights and the right to privacy and submitted that prisoners should be made aware that their communications are being monitored.[12] Caution was therefore recommended, and a targeted approach based on a person's risk was preferred over mass surveillance of the entire prison population. The Ombudsman, for example, felt that monitoring should only occur on a case-by-case basis. Some iwi partners considered that only higher risk individuals should be subject to such monitoring.

110. However, others noted that the right to privacy is not absolute and that "the privacy of prisoners should not be held as more important than the safety of other prisoners and the public."

Prisoners were not supportive of further monitoring powers

111. Prisoners we spoke to did not support increased monitoring of communications and activities, except for those deemed highest risk (e.g. terrorism and child sex offenders). They felt that monitoring would inhibit their abilities to rehabilitate, cause tensions with staff, and put further strain on whānau relationships. In particular, people said that if in-person visits were monitored, this would frustrate them and cause more people to "lash

[12] There is currently a disclaimer played at the start of all prisoner phone calls stating that the calls may be monitored.

out." They highlighted the importance of maintaining whānau connections and noted that this should not be further impacted on.

112. Prisoners highlighted the inconsistency in practice across sites. For example, some sites withheld mail with gang content in it, while others did not. People felt like they were being overly limited in what they are able to say, and noted that prisoners have a different way of speaking than the general public, which can be misinterpreted as presenting a risk by Corrections.

What objectives are sought in relation to the policy problem?

113. Our objectives for problem A1(a) and A1(b) are to:

- modernise and future proof the Act to support Corrections' purpose of keeping staff, prisoners and the public safe
- provide clarity over Corrections' powers and limitations to those powers, and ensure Corrections has the resources to have effective oversight of any harmful activity in prisons.

114. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights obligations	Considers the impact of our powers and necessary limitations to those powers in relation to our obligations under the Privacy Act and NZBORA, particularly s21: the right to be free from unreasonable search and seizure.
Transparency and accountability	Clarifies the parameters of Corrections' powers and provides accountability for these powers.
Practical to implement and responsive	Practical to implement across Corrections at an operational level, is responsive to change over time, such as future impacts of new technology
Contributes to better outcomes for Māori	Considers tangible impacts on Māori as a population group in prison, as well as specific Māori interests such as data sovereignty, and te Tiriti principles such as active protection and rangatiratanga (itself linked to data sovereignty).
Supports oranga/wellbeing of the people we manage	Examines how a proposal to extend or limit Corrections intelligence powers may impact the wellbeing of prisoners such as their relationships with family/whānau. Note that this criteria is not relevant for all sub-options.
Contributes to safety	Considers how the option will improve safety of prisons as well as public safety.

Deciding upon an option to address the policy problem

What options are being considered?

Problem A1: Corrections is unable to effectively monitor prisoner communications and gather information to keep prisons and the wider community safe due in part due to changes in technology

Problem A1(a): the Act is unclear on how we can use existing prisoner communications and information for intelligence purposes and the Act has not responded to changing communication methods

Option One – status quo

115. This option will see no changes to the Act, and we will continue operating under the current provisions and framework. This means we will continue to be able to monitor phone calls, and read mail for the purpose of assessing if it should be withheld. There will be no new provisions relating to new technology, and the Act will remain silent on the use of other information Corrections already holds.

Option Two – amend the Act to create specific provisions for each form of communication and information source

116. This option would amend the Act and then the Regulations (at a later date) to state specifically what prisoner communications and activities Corrections can monitor and gather information from to support Corrections purpose, with each provision being specifically identified. This option received the most support in public consultation, with people recognising that specific powers would provide more transparency and accountability to our intelligence activity.

117. This option would create specific provisions in the Act for sources of information that Corrections would be authorised to monitor. These sources of information would be grouped together into categories. This would future proof the Act by making it more technology neutral. These groups are:

- **Verbal:** verbal sources would include phone and video calling. Phone calls are already monitored but monitoring of video calling would be a new power.
- **Visual:** visual sources would include things like images and video footage. These are already retained by Corrections but this change would allow this information to be used for intelligence purposes**.**
- **In person visits:** visits are not currently monitored. Visits would not be monitored for all people, but only on a case-by-case basis as discussed below.
- **Written:** written sources would include mail and email. Mail is already able to be read but changes would mean information found in mail could be used for intelligence purposes.

118. **Digital media:** this would include internet services, open-source media, video footage, biometric information, incident reports, and trust accounts. This information is already available to Corrections but under this option, could be used in a different way to better enable us for intelligence purposes to detect risk and reduce harm Some types of communication, such as legal mail and phone calls, will continue to not be monitored. These changes do not intend to capture health information or information from someone's participation in rehabilitation programmes and services. Monitoring will only occur when Corrections believes it is reasonably necessary, and will remain targeted at high-risk individuals.

119. For the most part, this option clarifies Corrections' current monitoring powers and does not see an expansion in the scope of information gathered. The information sources listed above (excluding in person visits) are already accessible to Corrections and these changes will not see an increase in information available, just clarity around how it can be used. For example, information from mail and email would be able to be used for intelligence purposes, where currently it is not. In person visits will be an expansion of powers, and this will require safeguards to provide assurance that it is only taking place when reasonably necessary. It is estimated by Corrections Intelligence that the change to allow monitoring of in person visits would impact around 20 people per year.[13]

120. This option would include the following safeguards and limitations:

- *Case by case monitoring of in person visits:* The monitoring of in person visits would only be allowed to occur on a case-by-case basis, and require evidence being put to the Chief Executive (or a delegate at the senior executive level) that demonstrates that it is necessary for fulfilling Corrections' purpose of contributing to public safety and the maintenance of a just society through ensuring the safety and good order of prisons. It was highlighted through public consultation that monitoring of in person visits will breach a person's privacy rights further than the status quo, and so should only be done when absolutely necessary.
- *Targeted monitoring and data minimisation approach:* operational guidance will set out that monitoring for intelligence purposes is targeted at the highest risk individuals, based on risk assessments, and that Corrections will not retain personal information that is not directly relevant to detecting threats.[14] Regular review following implementation will provide assurance that Corrections is operating within these parameters.
- *Reasonably justified:* the Act will be drafted in a way that ensures monitoring only occurs when it is reasonably justified for supporting Corrections' purpose. This would be modelled off s 112 for monitoring phone calls, which allows Corrections to monitor for safety reasons. It was highlighted through public consultation that ensuring monitoring is reasonably justified is important. For example, though we are empowered to monitor all phone calls, it may only be reasonably justified to listen to a small percentage of these calls due to the risk of the individuals involved, and for the purpose of maintaining safety.

Option Three – amend the Act to create general restrictions and powers to gather information for intelligence purposes

121. This option would create 'blanket rules' for the gathering of information for intelligence purposes. An amendment would clarify that Corrections can monitor all forms of communication for the purpose of gathering intelligence. The amendment would be consistent across each different communication and information source.

[13] This figure is based on our current understanding of individuals who are deemed high enough risk to monitor in person visits.

[14] Risk assessments can be based on the nature of a person's offending, and whether there is intelligence received from partner agencies (such as Police and NZSIS). Prioritisation of resources based on risk occurs frequently, to ensure that an individual requires monitoring.

122. As above in Option Two, there are some forms of communication and information sources that will not be considered, including communications with statutory visitors/lawyers.

123. This option was not generally supported by the public, as blanket powers have a higher likelihood of Corrections breaching rights, and is not as transparent in our powers as Option Two.

124. As for Option Two, under this option, the Act would specify that monitoring must only be carried out where reasonably necessary, and that in-person visits can only be monitored on a case-by-case basis when approved by the Chief Executive. Operational guidance will also set out an approach to targeted monitoring and data minimisation.

125. As there will be no parameters on what we can and cannot monitor, this option could expand the scope of information gathered.

Problem A1(b): Corrections does not always have the staff capability and resources to process raw information on prisoner communications

Please note that the options below address different parts of problem A1(b) and are each compared against the status quo, not each other.

Option One – status quo

126. This option will see no changes and translating can only be done by a person employed by Corrections. We will continue to contract resources from other agencies where possible through the use of secondments. The Act would remain silent on the use of new technology for monitoring purposes.

Option Two – increase resources by hiring more staff with specialist skills

127. This option would address issues with resourcing by hiring more staff to work for Corrections who are able to process raw information. This would include staff who have expertise in translating coded language and different languages. This would mean an increase in staff who have access to prisoner information.

Option Three – allow Corrections to use other government employees for the purpose of translating different or coded language

128. This option would amend the Act to allow government employees from other agencies to be used for the purpose of translating different or coded language. This would allow Corrections to disclose to those employees information that we do not have the resources to translate or assess ourselves, such as different or coded language. This could be achieved by changing the definition of ‘eligible employee’ in the Act to include government employee from other agencies, or by drafting a section which empowers the Chief Executive or their delegate to share information outside of Corrections for the purpose of translation.

129. During public consultation some submitters noted the need to ensure privacy was protected and this could be achieved through Memorandums of Understanding (MoUs) and careful processes being put in place between agencies.

130. As Corrections already shares information for translation to other government employees through secondments, it is unlikely that there will be a large increase in people who have access to prisoner information.

Option Four – amend the Act to authorise technology to monitor activity

131. This option would amend the Act and the Regulations (at a later date) to allow developments in technology to be authorised to monitor communications or gather

information. This would mean that, in the future, Corrections could introduce technology, such as AI, which may make it easier to monitor prisoner communications without human intervention, for example through keyword recognition, voice recognition (to stop three way calling and ensure only approved people speak to prisoners) and decibel level detection (to detect when someone is yelling).

132. This option would include the following safeguards by amending the Act to require:

- Corrections to perform robust assessments of potential technology and trial these before rolling them out across sites including mitigating as much as possible any religious or cultural bias of the technology, and
- A statutory test for the authorisation of technology that requires the Minister to be satisfied that the benefits of using the technology outweigh the risks. This would provide further assurance that Corrections is not using technology that causes adverse harm and is biased. Details around what types of information the Minister needs to consider would later be added to the Regulations.

Feedback from public consultation on options

133. Submissions from public consultation generally supported Option Two in response to problem 1a, to amend the Act to insert specific provisions related to different types of communication. The importance of the safety and security of prisons was highlighted and it was noted that increased monitoring would prevent harmful and illegal activity, which would create an environment more conducive to rehabilitation.

134. However, it was also noted by the Law Society that "an environment of surveillance and monitoring can also run counter to fostering a relationship of trust and confidence which is key to supporting rehabilitation."

135. There were also concerns raised around the use of CCTV in private areas (for example toilets) and the use of biometric information. The Privacy Commissioner noted that their office is currently reviewing regulations related to biometric information for another agency to ensure it protects privacy.

Changes could have disproportionately negative impacts on Māori

136. We heard that specific attention needs to be paid to ensure Corrections monitoring is not implemented in a way that has a disproportionate impact on any one group in our management.

137. One stakeholder said: "Against the backdrop of racial discrimination, Māori are at risk of falling victim to the negative impacts of monitoring and intelligence gathering provisions." Key stakeholders like the Human Rights Commission and the Ombudsman said we would need to consider how monitoring would impact Māori.

Transparency and accountability is key

138. Some stakeholders suggested that independent oversight would be needed to monitor our intelligence function and reviews should be regular to ensure we are transparent with how we use our powers. The Ombudsman's office suggested that a statutory review could be included in the Act to provide further accountability.

139. Some people highlighted that Corrections may not have the resources required for effective monitoring of prisoner communications. Stakeholders believed more specialised training for staff was needed to support them in these activities. Monitoring powers should be provided to limited staff to balance prisoners' rights to privacy.

140. Caution was recommended by many when it came to enabling artificial intelligence. Some people believed AI would have benefits, including providing more privacy for

prisoners where phone calls would normally be listened to by staff. However, others were not supportive of Corrections using AI given the biases that are known to exist. People were concerned that this technology would not pick up on the nuances of language. The Ombudsman's office recommended that, if AI were to be used, it be deployed on a case-by-case basis and not used as mass surveillance.

141. Serco said they could see benefits of authorising other types of AI, such as facial recognition or cameras that picked up on people's behaviours to help staff identify where to direct resources. For example, a person leaving the visitors area might be distressed and facial recognition technology could alert staff to step in quickly to support the person.

How do the options compare to the status quo/counterfactual?

Problem A1(a): the Act is unclear on how we can use existing prisoner communications and information for intelligence purposes and the Act has not responded to changing communication methods

	Option One – status quo	Option Two – amend the Act to create specific provisions for each form of communication and information source	Option Three – amend the Act to create general restrictions and powers to gather intelligence
Complies with human rights obligations	0	- This option engages section 14 of NZBORA, which provides for the right to freedom of expression, as people may not feel free to express themselves knowing they are monitored, and in some cases will be prevented from expressing themselves for example if mail is withheld. This option better aligns with section 21 of NZBORA to be secure against unreasonable search and seizure, compared to the status quo and Option Three, because it provides clear limitations on powers and safeguards to protect against unreasonable monitoring. The option extends the scope of information gathered to include in person visits, and will see other information Corrections holds (mail, email) being used for intelligence purposes. This option is in line with Privacy Act principles to collect personal information only where lawful and necessary. It also engages Article 17 of the ICCPR not to be subject to arbitrary or unlawful interference with privacy, family or correspondence. This option provides safeguards that monitoring will only be used where necessary, and could be a justified intrusion on rights in order for Corrections to fulfil its purpose of public safety and the safety and good order of prisons	- - This option engages the same human rights obligations as Option Two and provides the same safeguards. However, as this option creates a broad monitoring power, there is a greater risk that monitoring could be carried out where it is not reasonable or necessary, which will infringe on these rights.
Transparency and accountability	0	++ This option will provide increased clarity around Corrections' duties and restrictions regarding monitoring, which provides greater transparency about what Corrections monitoring powers are. It would also see Corrections implementing review mechanisms operationally, including working with the Ombudsman to ensure external accountability.	- This option does not provide as much clarity over duties and restrictions as it creates blanket rules, which is less transparent than Option Two and the status quo. This option would also see Corrections implementing review mechanisms operationally, including working with the Ombudsman to ensure external accountability.
Practical to implement and responsive	0	+ This option would be practical to implement and enhance operational practice as all monitoring would have clear legislative guidance and restrictions, providing more consistency across the system. It is less resilient to change than Option Three, as powers would be more specific and require future amendments. However, it is relatively technology neutral, to be resilient to the creation of new methods of communications.	++ This option would be equally as practical to implement as Option Two, and would provide more resilience than both the status quo and Option Two. This is because broad sweeping powers would be flexible and not subject to becoming outdated as technology or best practice develops.
Contributes to better outcomes for Māori	0	- This option does not provide better tangible outcomes for Māori. Māori are more likely to have their communications monitored due to their overrepresentation in the prison population and the higher likelihood of being in a gang. Māori are also more likely to face negative effects of racial discrimination than non-Māori. While there will be greater safety benefits for Māori in prison, this could also have greater impacts on whānau connections. This option engages te Tiriti rights of equity and active protection, which will be mitigated through robust monitoring and reviews of the use of monitoring powers. This option has implications for Māori data sovereignty, which will need to be worked through in implementation.	- - As for Option Two, but the negative effects may be heightened by the risk of unnecessary monitoring as a result of broad monitoring powers being enabled.
Supports oranga/wellbeing of the people we manage	0	- Prisoners indicated that increasing monitoring powers would negatively affect their wellbeing by impacting their privacy, particularly when communicating with whānau. Hindering connections through monitoring in person visits could have a negative impact on people's wellbeing, however this will only happen in limited circumstances and will likely only affect less than 20 people per year. This would be somewhat mitigated by the safeguards in this option, such as through targeted monitoring and limitations on the monitoring of in-person visits. These changes will not impact decisions about peoples' security classifications.	- - As for Option Two, but there is a risk of greater impacts on wellbeing due to the possibility of overreach by Corrections as a result of broad monitoring powers being enabled.
Contributes to safety	0	++ This option will support Corrections to provide for the safety and security of prisons by enabling Corrections to have more oversight of illicit activities that cause harm and create disruption across our sites. This will assist us in forecasting trends and identifying areas of risk, for example preventing things like threats and intimidation, and assaults.	++ As for Option Two.
Overall assessment	0	+	-

		This option is more aligned with good legislative design when human rights are impacted by expressly authorising the monitoring of different forms of communications, and has appropriate limitations in place. Although it will be slightly less responsive, it provides a more balanced approach which actively empowers and restricts our activity. (Recommended option)	This option would be the most practical to implement and responsive but creates a risk of monitoring being carried out when it is not reasonable or necessary.

Problem A1(b): Corrections does not always have the staff capability and resource to process raw information on prisoner communications

Please note that the options below address different parts of problem A1(b) and are each compared against the status quo, not each other.

	Option One – status quo	Option Two – increase resource by hiring more staff with specialist skills	Option Three – allow Corrections to use other government employees for the purpose of translating different or coded language	Option Four – amend the Act to authorise technology to monitor activity
Complies with human rights obligations	0	- There may be further privacy implications as this option will increase the number of people who have access to personal information.	0 No significant change to the status quo as we already share information for translation purposes through contracting people. There will not be an increase in the information that needs to be translated, but this option makes it easier for us to access these resources. Complies with Information Privacy Principle 11, because information will only be disclosed in relation to the purposes for which it was obtained.	- This option engages section 21 under NZBORA to be secure against unreasonable search and seizure, as there would be an increase in the proportion of calls being monitored. This also potentially engages section 19 of NZBORA and section 21 of the Human Rights Act to be free from discrimination, because AI has the potential for bias. This would be mitigated by requirements in this option to trial technologies and have them authorised by the Minister before they are implemented.
Transparency and accountability	0	0 Same as the status quo – there would be more staff available to conduct these activities, but this would not change the way information is assessed or the policies Corrections has for monitoring prisoner activity.	0 Same as the status quo – Corrections already utilises resources from other agencies through contracting. This amendment would simply see this occurring more easily and with less administrative burden.	+ The option provides more transparency by creating clearer legislation. Safeguards around the use of AI will provide accountability that it is not used unreasonably or in a way that perpetuates bias.
Practical to implement and responsive	0	- - This is difficult to implement as it will involve large, ongoing costs to bring on new staff. This option is less resilient to change as resources will be reliant on staff abilities at the time, and we would still likely require contracting out of resources from other agencies when Corrections staff do not have the technical skills required, particularly with changes to technology and shifts in criminal activity.	0 While we have ongoing relationships with other agencies who could provide us resources to translate and decode information, this will be dependent on their own resource constraints. This option is resilient to change as Corrections will maintain access to resources that will improve our ability to detect harm. This option will require negotiations with external agencies to determine the terms of borrowing resources, however this already takes place currently through contracting and secondments, so it is not expected to be difficult to implement.	+ This option will be challenging to implement and will require thorough research and trials to ensure technology is not biased. However, once installed, it would be resilient, and would mean that staff resources can be better used. This supports the objective of modernising and future proofing the Act more than the status quo.
Contributes to better outcomes for Māori	0	- There is a chance that an increase in staff resources could result in more people being monitored. As Māori are overrepresented in the prison population and gang population, this could mean Māori are subject to further monitoring than the status quo.	0 This option does not materially impact outcomes for Māori compared to the status quo.	- There is evidence of AI technology being subject to unconscious bias, which could negatively impact on outcomes for Māori and cause further inequity. This would be mitigated by requirements in this option to trial technologies and have them authorised by the Minister before they are implemented. Corrections does not have a position on Māori data sovereignty and this will need to be worked through during implementation.
Supports oranga/wellbeing of the people we manage	0	0 No significant impact on the wellbeing of prisoners.	0 No significant impact on the wellbeing of prisoners.	0 No significant impact on the wellbeing of prisoners.
Contributes to safety	0	+ Will ensure Corrections has the resources to have effective oversight of potentially harmful material, which will protect the security of sites and promote public safety as a whole.	+ Will ensure Corrections has the resources to have effective oversight of potentially harmful material, which will protect the security of sites and promote public safety as a whole.	++ Will ensure Corrections has the resources to have effective oversight of harmful activity through the use of technology such as AI. This would contribute to the increased safety and good order of prisons as well as public safety by enabling us to better detect any threats to people in the community.
Overall assessment	0	- This option would be difficult to implement and less resilient compared to Option Three.	+ This option is practical to implement and would improve Corrections' ability to detect threats, which will contribute to safety. (Recommended option)	+ This option would improve Corrections' ability to detect threats efficiently in a transparent manner, which will help improve its ability to protect prison security and people in its care. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem A1: Corrections is unable to effectively monitor prisoner communications and gather information to keep prisons and the wider community safe due in part due to changes in technology

Problem A1(a): the Act is unclear on how we can use existing prisoner communications and information for intelligence purposes and the Act has not responded to changing communication methods

142. Option Two, to amend the Act to create specific provisions for each form of communication and information source is the preferred option to address problem A1(a).

143. Option Two meets the policy objectives by modernising and future proofing the Act to respond to the changes in communications and information Corrections needs to monitor in order to fulfil our purpose under the Act. While Option Two does not future proof the Act as much as Option Three, it is more aligned with government guidance on the creation or expansion of intelligence powers. The option is also more transparent than Option Three as it will provide explicit guidance on what communication and information sources we can monitor, under what circumstances and how we can use the information we gather. The option will hold us accountable to our powers as clear legislation will empower but also restrict our activity.

144. Option Two will allow us to have increased oversight of harmful activity happening in our sites, which will support us to better respond to risk and protect the safety of people in our management. However, feedback from prisoners is that this could negatively impact their wellbeing. This is mitigated through safeguards and limitations on monitoring under Option Two.

145. Option Two will engage human rights but provides safeguards by ensuring monitoring only occurs where necessary, and places limitations on monitoring in person visits.

146. Monitoring would continue to be targeted at the highest risk prisoners. This option would be drafted in a way that ensures that monitoring only occurs when it is reasonably justified for supporting Corrections purpose, similar to s112 of the Act regarding phone calls. This would help ensure that Corrections is not monitoring when it is unnecessary and prevent an overreach of powers. Public consultation highlighted that monitoring should be targeted and that we should not be seeking mass surveillance. Ensuring the legislation only allows for monitoring when there is a justified purpose will help ensure we do not overreach with our powers.

147. This option would need to be paired with a robust review and monitoring process, which Corrections will develop operationally and is discussed in the implementation section.

148. This option expands Corrections monitoring to include in person visits on a case-by-case basis, as well as monitoring of video calls, but otherwise does not significantly increase the scope of what information Corrections can monitor. This is because, apart from the monitoring of in person visits and video calls, prisoner communications and information sources are already accessible to Corrections. This option will see a change in how these types of information sources are used for intelligence purposes, however this does not necessarily fall outside the scope of why information is gathered in the first place – to support public safety and the safety and good order of prisons.

Problem A1(b): Corrections does not always have the staff capability and resource to process raw information on prisoner communications

149. Option Three and Option Four are both preferred options. Option Three, to allow Corrections to use other government employees for the purpose of translating different or coded language is the preferred option. It will allow us to process raw information that we would not otherwise have the ability to do. This will provide us with more oversight of illicit or harmful activity, which will make it easier to respond to risk and reduce harm. This will improve our ability to keep people safe and support their wellbeing, and fulfil our purpose under the Act. This is not a significant change from the status quo, where we already disclose information for translation purposes through contracting and secondments. This option makes that process easier, improving timeliness and ensuring Corrections has oversight of potentially harmful activity taking place in prisons.

150. Option Four, to amend the Act to authorise technology to monitor activity is also a preferred option. This would enable greater monitoring of communications to detect risk and support the purposes and principles of the Act. The impacts on human rights are also mitigated through safeguards, by requiring technologies to be trialled and authorised by the Minister before they are implemented.

Problem A2: Diagnosing the policy problem

What is the policy problem or opportunity?

Problem A2: there is a lack of clarity about how information taken from prisoner communications and activities should be managed and shared

151. If changes are to be made to the Act to respond to the problems identified above, it is important that there are clear requirements in place for how Corrections manages this information.[15]

152. Problem 2 has two sub-problems, which are examined below.

Problem A2(a): we do not have firm rules on how long intelligence information based on prisoner communications and activities should be retained

153. The Act currently provides that recordings of phone calls are destroyed after two years (unless there are specific grounds to keep them for longer) but is otherwise silent on how long to retain information that is gathered for intelligence purposes. We also follow an operational disposal schedule, developed with the Chief Archivist.

154. It is important that any information gathered by Corrections is retained only for as long necessary in line with the Privacy Act and Public Records Act.

155. In the absence of clear rules about retention of intelligence information, privacy principles should be followed to retain information only for as long as necessary. Currently, there is operational uncertainty around what length of time could be considered necessary, and whether this differs for different types of information or depending on who it relates to.

156. Given the sensitivity of information that might be gathered for intelligence purposes, it is important that there are clear guidelines for the retention of intelligence information, to ensure we are managing information appropriately and consistently.

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[15] Apart from section 117 of the Act, relating to phone calls.

Problem A2(b): there could be increased clarity about cross referencing and disclosing information

Corrections is currently unable to cross reference intelligence information that is gathered from different communication sources or at different time periods

157. Cross referencing information might involve gathering information to identify a risk from across a series of different letters and phone calls (and any new forms of communications we monitor as a result of these proposals) rather than from a single type of communication e.g. a piece of mail.

158. The current inability to cross reference information means that Corrections is unable to accurately assess developing risks. For example, people may write coded notes over a series of letters that only make sense to a reader when they are looked at together. Alternatively, we might find information in mail that is only contextualised when read in conjunction with a person's phone recordings. This information is also unable to be shared and cross referenced with other information from Police or the NZSIS unless any of the information contained in a piece of communications material suggests an immediate threat that would trigger the disclosure provisions in the Act.[16]

There is inconsistency with how intelligence is shared across different communications

159. The Act is also inconsistent regarding the sharing of information with other agencies, as it provides for sharing of prisoner phone calls but is silent on the sharing of information from other sources, such as mail. We share most information under the Privacy Act and through operational agreements with some agencies. However, the Act could provide more explicit and consistent guidance on when and how this sharing should be done. If Corrections is to expand its powers to monitor other forms of communications and use information gathered for intelligence purposes, the Act should be clear on how and when this information can be shared.

160. Legislative clarity would support information sharing with partner agencies, such as NZ Police and NZSIS, especially when this information could act as a 'missing puzzle piece' in building a clear intelligence picture. Additionally, as information gathered comes from prisoner communications, it is important for the maintenance of privacy rights that we are consistent in how and when we disclose information.

161. Additionally, the Act is unclear on what happens when an authorised person discloses information to another staff member who is not an authorised person, and how they can share that information. For example, say the prison manager (an authorised person) is alerted to something via a prisoner phone call which may have implications for other sites. The prison manager may want to share this information with the National or Regional Commissioners, and while they are able to under the current settings, the Act is unclear on how disclosure can occur from that point. The Regional commissioners may want to alert their staff, however they technically do not have the ability to disclose the information any further as they are not authorised persons.

162. This creates a gap in our ability to safely communicate issues across sites and staff, which hinders the safety and good order of prisons.

[16] See section 110A for mail and section 117 for phone calls.

What objectives are sought in relation to the policy problem?

163. Our objective for problem 2(a) and (b) is to ensure that Corrections has clarity over the management and use of information, to support us to act transparently and to ensure Corrections can play an effective support role in the wider intelligence community.

164. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/ consideration
Complies with human rights obligations	Considers the right to privacy of prisoners and those they communicate with.
Transparency and accountability	Provides clarity over the management and use of information to support transparency.
Practical to implement and responsive	Can be implemented easily and is resilient to change.
Contributes to better outcomes for Māori	Considers Māori data sovereignty.
Supports oranga/wellbeing of people we manage	Not applicable to this problem.
Contributes to safety	Contributes to the safety of staff, sites, and prisoners. Allows Corrections to improve public safety by ensuring we can play an effective support role in the wider intelligence community.

Deciding upon an option to address the policy problem

What options are being considered?

Problem A2: there is a lack of clarity about how information taken from prisoner communications and activities should be managed and shared

Problem A2(a): we do not have firm rules on how long intelligence information based on prisoner communications and activities should be retained

Option One – status quo

165. This option will see no changes to the Act and Corrections will continue using current phone call provisions, the Privacy Act and the operational disposal schedule to decide when information taken from prisoner communications should be destroyed. The disposal schedule contains different timeframes for different types of information.

Option Two – align the destruction of information gathered from prisoner communications within a set parameter (e.g. pre-existing phone call sections, sentence lengths, defined risk period)

166. This option is to specify in the Act a specific timeframe for retaining information. An example might be, the length of a person's custodial sentence or two years, in line with the phone call provisions. It was noted by Serco in public consultation that intelligence is long term, and disposing of information too soon could mean a loss of important insights that are important in assessing risk.

Option Three – repeal the phone call provisions and align the destruction of information gathered from prisoner communications with external legislation, supported through operational guidance

167. Under this option, the Act would be silent on timeframes for the destruction of information gathered from prisoner communications but would include principles that give some transparency to prisoners and the public about how an operational level disposal schedule would be developed. Those principles would state that information taken from prisoner communications and activities for intelligence purposes must be kept no longer than can be justified and have qualifications where needed to ensure we continue to maintain records on prisoners as required under the Public Records Act.[17] Corrections would then use guidance from the Public Records Act and Privacy Act supported by an internal disposal schedule to make decisions about the retention or destruction of information. This aligns with practices of other agencies, such as Police and NZSIS.

168. Under this option, the current provisions around destroying information gathered through phone calls no later than two years would be repealed and replaced by the requirement above. This will not be a significant change from the status quo and instead will create more consistency, as the retention of information (apart from phone calls) is already guided by the Privacy Act and Public Records Act.

169. This option would also include safeguards to ensure that information is not retained unnecessarily, including:

- regular reviews of information to ensure it is only kept for as long as is necessary, and
- publicising our disposal schedule (developed with the Chief Archivist) so there is accountability for the timeframes information is being retained for. The timeframes set out in the disposal schedule will not be changed as a result of this option.

Feedback from public consultation: information should not be retained for longer than is necessary

170. Stakeholders were supportive of only retaining information on prisoner communications and activities for as long as is reasonably necessary. The Privacy Commissioner noted that the Privacy Act 2020 provides for the retention of information. As such, they were supportive of repealing the current phone call provisions, as the Privacy Act already applies.

171. Serco stated that intelligence collection is long term and is often still required many years after it was originally collected. If we are to repeal the phone call provisions, policies would need to be in place to ensure information is reviewed regularly and only kept if needed. They use the acronym JAPAN – justified, auditable, proportionate, actionable, and necessary – for assessing if information is still needed.

[17] The Public Records Act states that agencies must "create and maintain full and accurate records of its affairs, in accordance with normal, prudent business practice."

Problem A2(b): there could be increased clarity about cross referencing and disclosing information

Please note that the options below address different parts of problem 2(b) and are each compared against the status quo, not each other.

Option One – status quo

172. This option will see no changes to the Act and Corrections will continue using current provisions relating to phone calls, and the Privacy Act and operational agreements to determine when information should be disclosed. We will be unable to cross reference information from different sources. Information can be disclosed whenever it meets the threshold under our legislation for phone calls, the Privacy Act, or for purposes outlined in operational agreements.

Option Two – amend the Act to allow intelligence from different sources to be cross-referenced

173. This option would enable Corrections staff to cross-reference information about prisoner communications and activities from different sources or time periods, for example, from mail and phone communications, or a series of letters. This amendment would also enable cross-referencing information with information we hold from other agencies. This would improve our ability to detect threats and reduce harm in the prison context.

Option Three – expand the disclosure of information to all forms of communication and information sources

174. The Act currently allows Corrections to disclose information from a prisoner phone call and from prisoner mail for specific reasons. Some of these reasons include to avoid prejudice to the maintenance of the law (preventing and detecting further offending), for purposes required by any law (such as the Privacy Act), or when there are reasonable grounds to believe that disclosure is necessary to enable an intelligence and security agency to perform their functions under the Intelligence and Security Act 2017.

175. This option would expand and standardise reasons for disclosure to apply for all forms of communication or information sources that Corrections monitors. This would not be a significant change from the status quo, as existing reasons in the Act would apply consistently. This option clarifies that these reasons apply to all forms of communication Corrections monitors. This option would also clarify that when authorised persons share information with eligible employees, the eligible employee can disclose that information further if needed, for example to staff who will be affected by the information.

Public consultation: further information sharing makes sense, but caution is needed

176. Stakeholders were supportive of information sharing with relevant agencies, but only when it is necessary. The Human Rights Commission noted that “the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain (RCOI) observed that public sector agencies should share information more widely in respect of the counter-terrorism effort.”

177. Disclosure should only occur when there is a justified purpose with robust protections supporting the process. The Privacy Commissioner suggested this could be achieved through a revised Memorandum of Understanding (MoU).

How do the options compare to the status quo/counterfactual?

Problem A2(a): we do not have firm rules on how long intelligence information based on prisoner communications and activities should be retained

	Option One – status quo	Option Two – align the destruction of information gathered from prisoner communications within a set parameter	Option Three – repeal the phone call provisions and align the destruction of information gathered from prisoner communications with external legislation
Complies with human rights obligations	0	+ This option aligns with the principles of the Privacy Act, and better aligns with Article 17 of the ICCPR not to be subject to arbitrary interference with privacy, by ensuring private information is only held for a set timeframe.	**0** Aligns with the principles of the Privacy Act, the Public Records Act, and rights in Article 17 of the ICCPR. There is potential that having an open-ended provision would lead to information being stored for longer than necessary or a misuse of power, which would be less aligned to the ICCPR. However, this is not a significant change from the status quo as we already follow the Privacy Act and Public Records Act for retaining information (apart from phone calls, which are specified in the Act.)
Transparency and accountability	0	+ More transparent and accountable as it provides clear guidance that information gathered for intelligence purposes must be destroyed after a set timeframe.	**0** Same as the status quo as, practically speaking, we will be following an internal disposal schedule (which we currently do), so there is the same level of clarity as current settings. To mitigate transparency risks, we could make our disposal schedule publicly available.
Practical to implement and responsive	0	- This would be practical to implement as there would be consistent rules for all information that is monitored for intelligence purposes. However, it would be less resilient than the status quo, depending on the set timeframe that is decided. Approximately half of prisoners re-enter our management after completing previous sentences. This means the option could result in a loss of important information.	++ This would be practical to implement as staff will follow an internal disposal schedule, as per the status quo. This would be resilient to change as information would be maintained for as long as is practical with standard business practice, giving us more scope to hold important intelligence information. Also, this option is more flexible and adaptable to change than the other proposed options as we can more readily adjust to best practice through updated operational guidance.
Contributes to better outcomes for Māori	0	**0** Corrections does not currently have a Department wide position on Māori data sovereignty, and all Māori data is managed the same way as other data. This option will not prevent Corrections from developing a policy around Māori data and implementing it in the future.	**0** As for Option Two.
Supports oranga/wellbeing of the people we manage	0	**0** No material impact on the wellbeing of people in Corrections' care. These changes will not impact decision-making for peoples' security classifications.	**0** As for Option Two.
Contributes to safety	0	- Consistent approaches to destruction of information could support Corrections to maintain a record of intelligence for an appropriate length of time to better allow us to support the wider intelligence sector and uphold public safety. However, this option could also result in some information being destroyed when it would still be necessary to retain for safety reasons, due to the inflexibility of this option.	**0** No significant change from status quo – this option will allow us to retain information for longer if necessary, meaning we will not be losing information that may assist us in contributing to safety outcomes for sites, staff, and prisoners. This will support us to play an effective support role in the wider intelligence sector.
Overall assessment	0	**0** This option would provide greater transparency and accountability than Option Three but would not be as resilient over time.	++ This option aligns closely with our responsibility to retain information for no longer than is necessary, while aligning with existing internal practices and being adaptable to change. (Recommended option)

Problem A2(b): there is inconsistency with how intelligence is shared across different communications

Please note that the options below address different parts of problem A2(b) and are each compared against the status quo, not each other.

	Option One – status quo	Option Two – amend the Act to allow intelligence from different sources to be cross-referenced	Option Three – expand the disclosure of information to all forms of communication and information sources
Complies with human rights obligations	0	0 No significant change. Aligns with privacy principles as information gathered will still only be used for the purpose it is gathered.	0 No significant change. This change would see current information sharing for phone calls and mail made consistent for other types of information gathered. This means that information from more sources would be shared and any sharing of information will be in line with the Privacy Act as Corrections would not share unnecessary or irrelevant personal information.
Transparency and accountability	0	+ More transparent and accountable as our powers to compare intelligence information will be clearly outlined. Clear legislation not only empowers but limits our abilities under the Act, which holds us accountable.	+ As for Option Two.
Practical to implement and responsive	0	+ Will involve updating staff and providing training and guidance that they can cross reference information. Resilient to change as it allows all communications to be cross-referenced even if new technologies or forms of communication are developed.	+ This option is practical to implement and resilient to change as it clarifies our ability to disclose information across different communication sources. May require MoUs with other agencies to be established or updated, which will be resilient to change and able to be amended in future if needed.
Contributes to better outcomes for Māori	0	- As Māori are overrepresented in the prison population and the gang population, there is potential that these changes will impact Māori prisoners more than non-Māori prisoners. Corrections does not have a position on Māori data sovereignty and this will need to be worked through during implementation.	- Corrections can already share information from monitoring phone calls and this would be expanded to apply to other information that is monitored. As Māori are overrepresented in the prison population and the gang population, there is potential that these changes will impact Māori prisoners more than non-Māori prisoners. Corrections does not have a position on Māori data sovereignty and this will need to be worked through during implementation.
Supports oranga/wellbeing of the people we manage	0	0 No material impact on wellbeing.	0 No material impact on wellbeing.
Contributes to safety	0	++ Will support Corrections' to protect the safety and security of prisons and promote public safety, as Corrections will be able to compare information across time and sources which indicate harmful activity. It will therefore be more likely that Corrections can detect risk and prevent harm.	++ Will support Corrections to protect the safety and security of prisons and promote public safety, as Corrections will be able to receive and provide key insights with external agencies which supports public safety overall. This option will allow us to better support the wider intelligence sector by sharing information that may be crucial to wider public safety concerns. Clarifying our ability to share information between eligible employees will also support our ability to reduce harm.
Overall assessment	0	+ This option would provide greater clarification and transparency on Corrections' ability to share and cross-reference intelligence and aligns closely with Corrections' role to promote public safety by protecting the safety and security of prisons. (Recommended option)	+ This option would provide clarification and transparency on Corrections' ability to share intelligence, would be resilient to change, and aligns closely with Corrections' role to promote public safety by protecting the safety and security of prisons. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem A2: there is a lack of clarity about how information taken from prisoner communications and activities should be managed and shared

Problem A2(a): we do not have firm rules on how long intelligence information based on prisoner communications and activities should be retained

178. Option Three, to repeal the phone call provisions and align the destruction of information gathered from prisoner communications with external legislation, is the preferred option. The option will create more consistency in the Act, as there will no longer be reference to destruction of some information and not others. This is not a significant difference from the status quo, as we were already aligned with other legislation and using a disposal schedule. This instead removes inconsistencies in the Act.

179. Option Three is preferred as it is aligned with standard practice on the retention and disposal of information. It provides Corrections with an appropriate level of flexibility to manage different pieces of information on different schedules, and to adjust timeframes for retention if necessary. It also means that we are not losing important information about people who are in our management for longer than the current two-year period for destroying recordings of phone calls. Though it is not as transparent as the other options, this can be mitigated by publicising our disposal schedule and ensuring that the Corrections Act specifies principles for how that disposal schedule will operate for the retention of intelligence information taken from prisoner communications and activities. Option Three was supported by the Privacy Commissioner during public consultation, as the Privacy Act applies to the retention of information.

Problem A2(b): there could be increased clarity about cross referencing and disclosing information

180. There are two recommended options for problem A2(b). Option Two, to amend the Act to allow intelligence from different sources to be cross-referenced, will improve Corrections' ability to detect risk across time and different information sources, which supports us to fulfil our purpose of promoting safety. The option will create consistency across how intelligence information is used and allow us to be more transparent in our monitoring abilities.

181. Option Three, to expand the disclosure of information to all forms of communication and information sources, will support Option Two. Expanding the purposes of disclosure to apply to all forms of communication will future proof the Act as it becomes more necessary for Corrections to monitor new types of communications. Clarifying that eligible employees can share information with one another when it is reasonably necessary will support us to reduce harm and communicate effectively across sites. This will also provide consistency for how we work with other agencies. This option will allow us to better support the wider intelligence sector by sharing information that may be crucial to wider public safety concerns.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	There is potential for prisoners to be subject to further monitoring (potentially ongoing), which could impact on their privacy and rights under NZBORA. Monitoring will still be targeted at the highest risk individuals, so most people will not experience the consequence of these changes. This could also impact on relationships with staff, other prisoners, and other people they communicate with that are not based in prison, but the nature of the change is unclear.	Low-medium	Medium It is clear that these proposals will impact on human rights, particularly the right to privacy. However, monitoring will be targeted, which will mitigate some of that impact.
Department of Corrections, including staff	There will be one-off implementation costs related to updating practice guidance and providing information about the changes to staff, prisoners, whānau and other impacted parties. These costs will be covered within baselines as this forms part of BAU activity. Sourcing, trialling, and rolling out new technology will have some initial costs which are not known; however, these are optional and can be implemented within available funding. Staff workloads could potentially increase, with greater access to other forms of information. Staff will also require further training about what the new legislation permits. The changes may also impact relationships between staff and prisoners, but the nature of this change is unclear.	Low-medium	Low Corrections does not yet have detail on the cost of trials and wider rollout of new technology. The impact on workloads and relationships may also depend on the effectiveness of the technology and staff's willingness and ability to adapt to it.
Other government agencies	Some costs associated with providing expertise for translation and analysis that does not exist within Corrections. For example, Police could be used to de-code language in mail. This is dependent on how often other government agencies are asked for support, which is unclear at this stage.	Low	Low
Friends and whānau of prisoners	Potential for increased monitoring may impact on relationships with friends and whānau in prison, particularly if people feel they cannot speak freely. This could make it more difficult to connect with prisoners, which may discourage future visits and communication.	Low-medium	Low We have not engaged with friends and whānau of prisoners on this subject.

	This is not a vast change from the status quo, and people still send mail and accept phone calls, knowing that these activities are monitored.		
Wider public	No cost.	N/A	N/A
Total monetised costs			
Non-monetised costs		*Low-medium*	*Low*
Additional benefits of the preferred option compared to taking no action			
Prisoners	As Corrections will have more clarity around intelligence gathering powers, staff should be better positioned to detect threats and reduce harm to prisoners.	Low-medium	Low This is an assumption based on staff capability and ability to adapt to new technology.
Department of Corrections, including staff	Frontline staff, particularly intelligence staff, will have greater clarity around our intelligence powers, which should help them detect and respond to threats faster and more effectively.	Low-medium	Low This is an assumption based on staff capability and ability to adapt to new technology.
Other government agencies	Greater assurance that Corrections is detecting and managing risks effectively, and can better support wider work in the intelligence sector.	Low-medium	Low This is an assumption based on staff capability and ability to adapt to new technology.
Friends and whānau of prisoners	Greater assurance that Corrections can keep prisoners safe as Corrections is better positioned to detect and respond to threats.	Low-medium	Low-medium This is an assumption based on staff capability and ability to adapt to new technology.
Wider public	Greater assurance that Corrections is appropriately monitoring activities of people in its management. This should help protect public safety.	Low-medium	Low-medium This is an assumption based on staff capability and ability to adapt to new technology.
Total monetised benefits			
Non-monetised benefits		*Low- medium*	*Low-medium*

Delivering the option

How will the new arrangements be implemented?

182. Implementation will involve updating operational guidance for intelligence staff, as well as more targeted training and information for custodial staff in prisons. The guidance will be around what is allowed or not under the new legislation, and the process to follow for each type of communication. For the monitoring of in person visits, staff will be provided clear guidance on when this can and cannot be done, and made aware that approval must be sought from the Chief Executive on a case-by-case basis. A process will be developed to enable this to occur.

183. The definition of 'correspondence' under section 3 of the Act will need to be updated to reflect these changes, as the current definition is:

- a handwritten, typed, or printed message that is mail or contained in mail;
- includes a handwritten, typed, or printed manuscript contained in any mail; but
- does not include an electronic message or fax.

184. In line with the proposed changes, we will need to amend the definition to ensure it captures other technology, such as email. This is because, as our system modernises, prisoners will more commonly correspond through electronic means.

185. Guidance will also need to be updated for the appropriate storage of information. This may include new training for staff to operationalise the changes to the Act. There will also be a review of relevant Regulations to identify whether any changes are needed to align the Regulations with the new provisions in the Act.

186. Corrections may also look to establish a series of memorandum of understanding with relevant sector partners to support information sharing activities.

187. Signage and information given to prisoners and people who communicate with prisoners will be updated. For example, at present prisoners can view signs beside telephones that state that calls are recorded. Any such additional powers would be clearly displayed next to communication devices prisoners use such as possible audio visual or email facilities in the future should they be monitored by Corrections.

188. The introduction of AI technology will require extensive due diligence and robust assessments of technology. This will involve trialling technology prior to rolling it out across sites and satisfying legislative requirements that the benefits of use outweigh any risks. It is likely that implementing this option will come at some cost, particularly initially as we acquire technology.

189. We sought feedback from technical experts on Te Tiriti about how to mitigate impacts on Māori, and as a result our preferred option references the need to protect against cultural and ethnic bias. The experts highlighted that it is important that Corrections:

- ensure that Māori are not flagged as risk for speaking te reo
- partner with Māori
- are aware of any bias in the design of amendments to the Act
- provide appropriate oversight of intelligence activities, and
- ensure staff are appropriately trained.

190. Additionally, Corrections will need to consider Māori Data Sovereignty when implementing these options. Public consultation highlighted this as important. Te Mana Raraunga – the Māori data sovereignty network – developed a set of guiding principles for understanding and upholding data sovereignty. These include:

- **Rangatiratanga | Authority:** 'Māori have an inherent right to exercise control over Māori data and Māori data ecosystems. This right includes, but is not limited to, the creation, collection, access, analysis, interpretation, management, security, dissemination, use and reuse of Māori data.' 'Māori have the right to data that is relevant and empowers sustainable self-determination and effective self-governance.'
- **Whanaungatanga | Obligations:** Organisations responsible for the creation, collection, analysis, management, access, security or dissemination of Māori data are accountable to the communities, groups and individuals from whom the data derive.
- **Kotahitanga | Collective benefit:** Data ecosystems shall be designed and function in ways that enable Māori to derive individual and collective benefit.
- **Manaakitanga | Reciprocity: F**ree, prior and informed consent (FPIC) shall underpin the collection and use of all data from or about Māori. Less defined types of consent shall be balanced by stronger governance arrangements.
- **Kaitiakitanga | Guardianship:** Māori data shall be stored and transferred in such a way that it enables and reinforces the capacity of Māori to exercise kaitiakitanga over Māori data.

191. Corrections and wider government have not yet reached a final position on Māori data sovereignty, which makes it difficult to assess how Māori data sovereignty will impact these proposals. However, the te Tiriti relationship will inform this position and guide efforts to uphold data sovereignty. Nothing in this analysis will prevent Corrections from adopting a position and adapting our systems in the future.

How will the new arrangements be monitored, evaluated, and reviewed?

192. Because the proposed powers impact on human rights and privacy rights we propose that, in addition to routine reviews of how we use our powers and resources, we will commission a review approximately 18 months after any new powers come into effect about how we are using them (timing for all reviews and evaluations are discussed in the final section of this RIS). This review will produce a report that will be provided to key stakeholders including internal ones, the Minister of Corrections, the Ombudsman and the Human Rights and Privacy Commissioners.

193. In order to enable this review, following implementation of the changes, data will be collected about how often the powers are being used, where monitoring powers are being targeted and when in-person visits are being monitored and for what purpose.

194. The review will consider:

- Are powers effective and pragmatic? Is monitoring occurring only where reasonable and justified?
- Is there evidence of bias toward groups, such as ethnic or religious groups?
- How are intelligence activities directed and commissioned?
- Are we collecting information lawfully, and is it being disclosed lawfully? How is it being used by decision makers?

Section B: Ensuring the internal disciplinary processes in prisons are effective

Terminology used in this section

Hearing Adjudicator (Adjudicator): a Corrections employee who has been appointed to hear and decide on the outcome of a misconduct hearing for prisoners.

Visiting Justice: any District Court Judge, or a Justice of the Peace, barrister or solicitor, who has been appointed by the Governor General to hear and decide misconduct hearings for prisoners.

Prosecution/Prosecutor: a Corrections employee or employees tasked with proving that a person in prison has committed an offence against discipline.

Inspector: a person employed by the Inspectorate to oversee the corrections system.[18]

Disciplinary offence: any offence against discipline as defined by subpart 5 of the Act.

Accused person: a person charged with a disciplinary offence.

Disciplinary hearing (hearing): a hearing of a person charged with an offence against discipline, conducted by an Adjudicator or a Visiting Justice.

Natural Justice: Natural justice requires fair treatment and processes without bias, and the right to be heard, when decisions affecting rights are being made (e.g. a disciplinary hearing). The principles of natural justice are guaranteed under NZBORA even when the law provides no detailed process.

Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

The disciplinary process is essential for the safe and effective management of prisons

195. The disciplinary process is an internal process available to hold prisoners to account for their actions. It is an essential tool for Corrections in its safe and effective management of prisoners. Staff are trained to be responsive to incidents in prisons and use their relationship management skills to de-escalate and resolve incidents wherever possible. However, prisoners can present challenging behaviour and it is important that there is a process for holding people to account for misconduct.

The disciplinary process in prisons is set out in both the Act and Regulations

196. The Act and Regulations define what actions and behaviours represent misconduct by prisoners and set out Corrections' disciplinary processes. Misconduct includes a large range of offences from the minor, such as people being out of their cell without permission, to more serious offences such as damaging prison property or assault.

197. While serious misconduct that constitutes a criminal offence can be referred to Police, the internal disciplinary process allows any allegation of a civil offence against prison

[18] A full list of powers and functions of inspectors is set out in s29 and subpart 6 of Part 2 of the Act.

discipline to be heard by an Adjudicator or a Visiting Justice. If Police prosecute a criminal offence, it is not prosecuted under the internal disciplinary process.

198. Disciplinary hearings are not criminal trials, they are an enforcement of prison rules that can result in sanctions as described below.

199. In 2021, an average of 1,390 disciplinary charges were brought per month, totalling 16,684 charges for the year. The vast majority (75% to 85%) of these charges resulted in some form of penalty each month.

The Act and Regulations define certain roles and who qualifies for these roles

200. Being an Adjudicator is a voluntary position that is incorporated into a Corrections employee's other daily tasks. Adjudicators receive training and undergo an assessment to determine their competence to conduct disciplinary hearings.

201. Adjudicators refer cases to be heard by Visiting Justices when they are complex, when legal representation is permitted, or when the allegations may warrant a higher penalty than Adjudicators have the power to impose. Unlike Adjudicators, Visiting Justices also hear appeals.

202. The employment of Visiting Justices is controlled and funded by the Ministry of Justice who nominate those appointed by the Governor-General.

203. Prosecutors can be any staff member other than a Prison Manager or staff member who is a witness at a hearing. Being a Prosecutor is a full-time role that staff are seconded into, generally for a period of four years. Prosecutors generally receive training in Corrections legislation, hearing protocols and processes.

The Act sets out requirements for the internal disciplinary process

204. All offences against discipline defined in the Act can result in a charge. For minor or unintentional breaches, it is at the discretion of the staff whether to charge a prisoner. Prosecutors assess misconduct reports to decide whether charges will proceed and arrange times for hearings with either an Adjudicator or Visiting Justice. All cases are heard by an Adjudicator in the first instance.

205. The Act and Regulations set out timeframes for disciplinary hearing processes, including possible timeframes for adjournment.[19]

206. Hearings occur in prisons, although they may be undertaken remotely in some circumstances.

207. The person charged is required to be present during the hearing and the Adjudicator or Visiting Justice must ensure the person charged understands and participates in the proceedings. The person charged may engage legal representation and a support person, if approved by the Adjudicator or Visiting Justice.

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[19] Charges are expected to be laid immediately, and any charge not laid within seven days of the alleged offence is eligible to be dismissed by an Inspector if requested. Similarly, hearings must take place within 14 days of the charge being laid unless an adjournment is granted, or 21 days if an adjournment is granted. When these timeframes are exceeded the person charged may apply to the Inspector to have the charge dismissed.

208. If the person charged does not plead guilty, the Prosecutor provides evidence and the person charged is also entitled to be heard, give evidence and to call and cross-examine witnesses.

209. After hearing all evidence, the Adjudicator or Visiting Justice decides whether the case has been proved beyond reasonable doubt, and informs the person charged whether:

- they have been found guilty, and what penalty is imposed
- the charge has not been proved, and their case has been dismissed, or
- the hearing will not proceed and has been referred to an appropriate authority (e.g. Police).

Penalties can be imposed on those found guilty of disciplinary offences

210. At the conclusion of the hearing the person charged is provided with a record of the hearing and decision, that they sign, and an application form if they wish to appeal the outcome.

211. Adjudicators and Visiting Justices can impose a range of penalties including periods of cell confinement, loss of privileges or forfeiture of earnings. For certain offences, Adjudicators and Visiting Justices can also order that a specific amount be withdrawn or withheld from a person's earnings.[20] Visiting Justices have powers to impose higher penalties than Adjudicators.[21] Penalties are normally imposed during the hearing proceedings.

212. Any penalty of cell confinement or forfeiture of privilege takes effect immediately, except where there is an active appeal. The penalties imposed are not cumulative, cannot be deferred, and cannot include a suspended sentence.

Hearing outcomes can be appealed

213. The person charged has 14 days from the date of the hearing decision to lodge an appeal with the Prison Manager. Any penalty imposed is suspended until the appeal process is completed. Appeals are heard by Visiting Justices.

214. Although there is no statutory right of appeal against the decision of a Visiting Justice, the decision can be the subject of judicial review proceedings in the High Court.

Deciding upon an option to address the policy problem

Problem B: **the current hearing and appeal process does not enable disciplinary issues in prison to be addressed in a manner aligned with effective justice**

What scope will options be considered within?

Corrections' Joint Action Plan is resulting in improvements to the disciplinary process

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[20] These personal earnings are limited to those received through Corrections' employment programmes whilst in prison.

[21] For example, Adjudicators can impose the forfeiture or postponement of privileges (e.g. loss of rights to television), for a period not exceeding 28 days, whereas a Visiting Justice can impose the forfeiture or postponement of privileges for a period not exceeding three months.

215. As part of the Joint Action Plan five operational workstreams are underway. One of these workstreams targets efforts to improve and standardise the disciplinary process across sites. To date this has included enhanced training for Prosecutors, a sentencing assistance framework for Adjudicators, and a framework for those alleged crimes committed in prison that will be referred to Police to investigate via the 105 online tool.[22]

216. The operational changes above are recent but a survey in August 2022 showed there has already been a slight reduction in the average number of days charges of misconduct are taking to be heard and finalised.

217. This RIS therefore considers options for legislative amendment that would better support these changes to operational best practice.

A range of options have been considered and ruled out of scope

218. A range of potential changes to the Act were publicly consulted on and in response to feedback, have now been ruled out of scope.

219. Options to expedite the process by extending the powers of Adjudicators and the range of cases they can hear were ruled out of scope as they may remove necessary safeguards against bias (real and perceived) and further undermine the credibility and transparency of the disciplinary process among prisoners.[23] This resulted in the exclusion of options to:

- enable Adjudicators to hear charges of false allegations at their site
- enable Adjudicators to hear cases where legal representation has been granted, and
- increase the range of penalties available to Adjudicators to impose, to reduce the number of referrals to Visiting Justices.

220. For similar reasons an option to reduce the number of days allowed for appeal was ruled out of scope. It was widely suggested that there is insufficient evidence that a reduction in the appeal period would result in any significant reduction in delays to the hearing process. Meanwhile, any reduction in the appeal period would inhibit natural justice, including by limiting the accused's appeal rights and accessibility to legal advice.

221. There was substantial support for strengthening and standardising training for Prosecutors and the benefits this may have on the fairness of the hearing process. However, this has been ruled out of scope as operational changes already underway under the Joint Action Plan are expected to result in significant improvements. These improvements in training will be essential for the successful implementation of the options explored below.

Some options suggested by respondents were also considered but ruled out of scope

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[22] Most disciplinary offences are not referred to Police as criminal offences and will remain unaffected by this change.

[23] This feedback was provided by a number of submitters, including the Human Rights Commission.

222. Suggested options from respondents that have also been ruled out of scope for now, include the introduction of full restorative justice models for disciplinary processes and extending the Adjudicator position to include a wider range of candidates including iwi representatives. Such fundamental changes to the disciplinary process are not feasible at this time but will continue to be considered for future change.

223. One respondent suggested a live and continuously updated 'case book' to record and standardise sentences imposed for the same offences between sites. Submissions from people with lived experience also emphasised a need for greater consistency of penalties for similar offences. The recent introduction of the sentencing assistance framework for Adjudicators may address this problem. The framework provides a guide for penalties for specific offences and is based off several months of data from different sites and cases. Additional options to address this problem have therefore been ruled out of scope.

Respondent's emphasis on the importance of timeliness for effective justice has framed the options considered

224. Many respondents agreed that the disciplinary process needs to be timely to be effective. Some also suggested that a quick and fair hearing was in the best interests of the wellbeing of the accused. One respondent suggested that for "justice to be effect[ive] in the prison environment [it] needs to be FIRM, FAIR AND FAST." However, some others including the Auckland District Law Society and People Against Prisons Aotearoa suggested a fair hearing must always have primacy over a quick process.

225. The majority of survey respondents (85 respondents or 62.5%) who provided an answer agreed or strongly agreed that disciplinary processes in prison would be made more timely, efficient and fair by adjusting the current settings. Only 15 respondents (11%) disagreed or strongly disagreed.

226. We have analysed aspects of the disciplinary processes in the United Kingdom and some Australian states including Victoria, Queensland, and New South Wales to inform the options considered.

What is the overall policy problem or opportunity?

Problem B: **the current hearing and appeal process does not enable disciplinary issues in prison to be addressed in a manner aligned with effective justice**

227. Generally, cases are taking too long to be heard and finalised and this delay in justice is undermining the credibility and effectiveness of the disciplinary process and Corrections ability to fulfil its purpose under the Act.

228. In a survey of the three months up to September 2021, misconduct cases took on average 95 days to be heard and finalised. Such extended wait times can be frustrating for the person accused and may potentially impede their rehabilitation and reintegration. If following charges, they are considered a risk to the security of the prison they may be placed on segregation until their hearing to ensure the safety and good order of the prison. Under segregation they may lose access to temporary release or temporary removal and other rehabilitation and reintegration programmes.

229. When there are victims, whether these are staff or other prisoners, waiting such a period for justice to be affected can also be frustrating and undermine faith in the

disciplinary process. This impacts the credibility of the process, inhibits any deterrence factor and potentially encourages harmful retributive behaviour.

230. The effectiveness and credibility of the disciplinary process is also being impeded by:
    - a lack of non-punitive options that support improved behaviour
    - the omission of some behaviour that jeopardises the safety of prison from the list of offences against discipline
    - the accused person refusing to attend hearings and delaying proceedings, and
    - an inability to respond quickly to the changing technological needs of prisons.
231. These four sub-problems are discussed below.

What objectives are sought in relation to the policy problem?

Objective: to improve the effectiveness of disciplinary processes in prisons

232. Our objective is to ensure prison internal disciplinary processes are effective at all sites.
233. An effective disciplinary process ensures people are held responsible for offences against discipline in a fair, balanced and consistent way, supports rehabilitation and reintegration and improved behaviour, is considerate of harm where harm has occurred, and operates in a manner that maintains its credibility in the system among staff and prisoners. An effective disciplinary process is also timely, while allowing sufficient time for due process, including natural justice.
234. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights obligations	The extent to which the option impacts on natural justice and other human rights, namely those defined in NZBORA, the Human Rights Act, the Mandela Rules, and the ICCPR.
Transparency and accountability	The extent to which the option supports the transparency of the disciplinary process for prisoners charged, victims, staff, and others including legal counsel, Visiting Justices, and Adjudicators. The extent to which the option supports checks and balances, including oversight of decisions and appeal processes.
Practical to implement and responsive to change	The practicality of implementing the option for all people involved, internal and external, and how easily the option will allow for innovation including changes in technology or shifts in best practice.

Contributes to better outcomes for Māori	The extent to which the option will tangibly improve outcomes for Māori in the corrections system and contribute to Corrections supporting the Crown to meet its responsibilities under te Tiriti.
Supports oranga/wellbeing of the people we manage	The extent to which the option will improve how prisoners experience the disciplinary process, including its timeliness. The criteria give consideration to the oranga/wellbeing of all those charged, the wider prison population and any victims of misconduct.
Contributes to safety	The extent to which the option will contribute to improved behaviour and good order of the prison which may enable improved safety for both staff and prisoners, as well as the wider public.

What are the sub-problems and options being considered?

The lack of flexibility in the offences and penalties available is limiting the effectiveness of the disciplinary process

235. A suitable range of defined and prosecutable offences are essential to an effective disciplinary process, as is a range of effective penalties. We have identified two gaps that could be addressed to better support the disciplinary process to improve behaviour in prison.

Problem B1: there is no non-punitive option to support behavioural change

236. Currently, the Act allows a range of sanctions for proven misconduct ranging from forfeiture of privileges to periods of cell confinement. The current sanctions rely purely on a deterrence model to discourage poor conduct. There is no option for an Adjudicator or Visiting Justice to incentivise sustained improved or good conduct even when this flexibility may be in the interests of the person and allow the disciplinary process to be more effective.

237. Sustained periods without breaches of discipline may better promote longer term offence-free behaviour than the implementation of more punitive penalties.

238. Suspended penalties, otherwise known as probation periods, or ‘good behaviour bonds’ are an option to encourage sustained periods without breaches of discipline, particularly following minor offences or a person’s first offence.

239. However, the Act requires that any penalty must start on the date it is imposed. This requirement precludes the use of any suspended penalty.

240. When a penalty is imposed on a person that includes loss of privileges, they may also lose eligibility to begin or continue rehabilitation or reintegration programmes which may later impact their parole eligibility.

Scope options have been considered within

241. A non-legislative option to allow Adjudicators and Visiting Justices the ability to use a proxy suspended penalty was discounted as it would not align with the Act, and would not allow sufficient oversight. We have therefore not included any non-legislative options to allow Adjudicators or Visiting Justices to suspend penalties.

242. Similarly, a formal diversion process was also ruled out of scope. An informal diversion type process is already practiced in prison with Corrections Officers exercising discretion over what misconduct is formally charged through the disciplinary process versus when prisoners may be given a warning. In the Police setting, diversion is often provided to first time and non-serious offenders on the conditions of restitution or attendance at rehabilitation programmes. Restitution to the state is already available through penalties imposed under the disciplinary hearing process and rehabilitation and reintegration programmes are already provided as a core part of Corrections' operations.

Options for problem B1: there is no non-punitive option to support behavioural change

Option One – status quo

243. Under the status quo, penalties would continue to be required to commence immediately under section 140(1)(a) of the Act, prohibiting the use of suspended penalties.

Option Two – legislative change to enable suspended penalties for up to three months

244. This option is to amend the Act to:

a) allow Adjudicators and Visiting Justices to suspend an imposed penalty, for up to three months

b) remove the requirement for a penalty to start immediately, if it has been suspended.

245. Limiting the period that can be suspended to 3 months rather than 6 months (as used in similar jurisdictions) will reduce the likelihood that a suspended sentence will have any unintended impact on security classifications, which are reviewed at least once every six months during someone's sentence.

246. A person who is otherwise eligible will be able to start or continue with a rehabilitation or reintegration programme during their suspended penalty period.

Feedback from public consultation

247. There was a mixed response to suspended sentences from public consultation. Some suggested there is insufficient evidence that it would encourage improved behaviour in prison, but it could be worthwhile if it does. The Auckland District Law Society argued suspended penalties should not result in a recorded misconduct, should only be available after a guilty verdict has been obtained, and only for minor offending. Other potential issues raised included those from the New Zealand Parole Board, who were concerned about the implications for those near release and the potential for subjective criteria that may result in people with similar charges receiving different penalty outcomes and these being weighted differently during parole decisions.

248. If implemented, an active suspended penalty period in which no further offending had occurred would be given the same consideration by the Parole Board as a completed suspended penalty with no further offending. There will be a review and assessment

process to ensure suspended penalties are being used in a consistent and fair manner across cases and sites and to assess if they are resulting in any changes to behaviour.

249. Feedback from prisoners was that the current misconduct process created a negative cycle of punishments and behaviour, and was often overly punitive for minor offences. Some men suggested that there should be more discretion as to whether a penalty was imposed, which this option supports.

Suspended penalties are already available in other jurisdictions

250. Some international jurisdictions do have the option of suspended penalties. In the United Kingdom, for example, His Majesty's Prisons use 'suspended punishments', which allow punishments, other than cautions, to be suspended for up to six months. If a person is found guilty of a further offence during the suspended period, then an Adjudicator can impose the suspended punishment in full, activate part of the punishment, or extend the suspension period by up to a further six months.[24]

[24] His Majesty's Prison & Probation Service, *Prisoner Discipline Procedures (Adjudications)*, PSI 05/2018, reissued 15 May 2021, p. 38, para 2.68.

How do the options compare to the status quo/counterfactual?

Problem B1: there is no non-punitive option to support behavioural change

	Option One – status quo	Option Two – enabling suspended penalties
Complies with human rights obligations	0 The current disciplinary process complies with ICCPR, NZBORA and the Mandela Rules.	++ Will enhance human rights compliance by increasing access to the natural justice principle of flexibility (s 27 NZBORA).
Transparency and accountability	0 The current penalty framework is clearly outlined in the legislation and guidance for Adjudicators. The outcome of a hearing can be appealed.	+ Standardised guidance, and effective recording of hearings with ongoing and responsive monitoring will ensure transparency and accountability and reduce any risk suspended penalties may be imposed subjectively between different sites, Adjudicators, or Visiting Justices. The ability to appeal the penalty of a hearing will remain.
Practical to implement and responsive	0 The current disciplinary process does not allow penalties that are responsive to the needs of all people.	++ The introduction of a suspended penalty will provide greater flexibility and responsivity to ensure the right penalty is issued in the right circumstances. Basic changes to training and guidance for Adjudicators and Visiting Justices, and system updates will be required.
Contributes to better outcomes for Māori	0 As it is the status quo, the outcomes for Māori are kept the same.	+ Eligibility for programmes can be impeded by misconduct charges. Suspended penalties may allow more Māori to gain and maintain eligibility for programmes that improve rehabilitative and reintegrative outcomes.
Supports oranga/wellbeing of the people we manage	0 The current penalty framework relies on deterrence alone to prevent poor conduct, this limits how the framework can support improved behaviour and subsequent improvement to the oranga/wellbeing of individuals and the wider prison population.	+ Suspended penalties may encourage sustained periods of improved behaviour and similarly, increased consistency between sites may reduce stress and frustration due to differences in how poor behaviour is addressed or penalties imposed. Both will benefit the oranga/wellbeing of the wider prison population
Contributes to safety	0 The current penalty framework acts as a deterrent of poor conduct, which may prevent unsafe and violent behaviour in prison.	++ Suspended penalties will allow more people to maintain eligibility for rehabilitation and reintegration programmes, and improved outcomes, including behaviour, from these programmes will result in improved safety in prisons.
Overall assessment	0	++ Suspended penalties will support a safer prison environment, with improved wellbeing outcomes and a more effective and transparent disciplinary process. (Recommended option)

Problem B2: not all behaviour that jeopardises the safety or good order of prisons is captured in the listed offences against discipline

251. Currently, it is an offence against discipline listed in the Act to behave in an offensive, threatening, abusive, or intimidating manner. However, this does not accurately capture the incitement or encouragement of other prisoners to behave in an offensive, threatening, abusive or intimidating manner.

252. There have been occasions where people have incited others to commit an offence. For example, instructing another person in prison to commit an assault. Under the current legislative framework, it is difficult to successfully charge people who have incited this behaviour when this behaviour is not already covered by the criminal offences prosecutable by Police.

253. While it is an offence under the Act to "[combine] with other prisoners for a purpose that is likely to endanger the security or good order of the prison", this could be interpreted as relating to incidents where prisoners commit offences jointly, rather than where one person encourages or incites another.

254. By comparison, section 3 of the Summary Offences Act 1981 more specifically details incitement, stating that "[e]very person is liable… who, in or within view of any public place, behaves, or incites or encourages any person to behave, in a riotous, offensive, threatening, insulting, or disorderly manner that is likely in the circumstances to cause violence against persons or property to start or continue."

Scope options will be considered within

255. A non-legislative operational change that would require all incidents of incitement that are offences under the Crimes Act 1961 to be referred to the Police was publicly consulted on. This change has already been operationalised under the Joint Action Plan, by a threshold framework that identifies which types of crimes (as per the Crimes Act and Summary Offences Act 1981) committed in prison will be referred to Police. However, these changes make no change to Corrections' inability to prosecute non-criminal incitement offences internally.

Options for problem B2: not all behaviour that jeopardises the safety or good order of prisons is captured in the listed offences against discipline

Option One – status quo

256. Under the status quo, inciting others to commit an offence would continue to not be explicitly listed as an offence within the Act. Where an instance of incitement is an offence under the Crimes Act 1961 it will be referred to Police to investigate, where appropriate.

Option Two – specifying the incitement of others to commit an offence as an offence

257. This option would amend the listed offences under the Act to include the incitement of others to commit any offence against discipline, allowing the offence to be prosecuted under the internal disciplinary process.

Public feedback on these options

258. There was some support for referring incitement offences to Police, although the Auckland District Law Society argued this would unnecessarily increase crime rates for offences which may often have occurred in response to the prison environment. The Law Society suggested there was no good reason why incitement should not be included as a disciplinary offence. Others advised that if incitement was to be an offence it should be drafted in accordance with the Mandela Rules, including clearly

defining the components of any new incitement offence and associated penalty. There was also a recommendation that the parameters of a new offence for incitement should only extend to calculated incitement of more serious offending.

How do the options compare to the status quo/counterfactual?

Problem B2: not all behaviour that jeopardises the safety or good order of prisons is captured in the listed offences against discipline

	Option One – status quo	Option Two – specifying the incitement of others to commit an offence as an offence
Complies with human rights obligations	0 The current disciplinary process complies with ICCPR, NZBORA and the Mandela Rules.	0 Specifying incitement as an offence to fill the existing gap will have no additional implications on human rights compared to the current settings. The change will be clearly articulated and defined and will maintain the right to appeal.
Transparency and accountability	0 Offences and the disciplinary process are clearly outlined and there is a right to appeal the outcome of a hearing. Incitement of an offence is not clearly captured.	+ Establishing incitement as an offence provides greater clarity that this behaviour is an offence and that it can be prosecuted.
Practical to implement and responsive	0 Under the existing settings it has been difficult to prosecute incitement.	+ This change will enable incitement, which impedes the safety and good order of prisons, to be easier to prosecute when appropriate.
Contributes to better outcomes for Māori	0 As it is the status quo, the outcomes for Māori are kept the same.	0 Specifying incitement as an offence to fill the existing gap will most likely have no additional implications for Māori outcomes. The process will be monitored to reduce the risk of unintended consequences that may result from systemic bias, such as the risk of disproportionate prosecution of Māori for incitement offences.
Supports oranga/wellbeing of the people we manage	0 Any incitement of any disorder within the prison environment can impair the oranga/wellbeing of people in prison.	0 A more readily prosecutable offence of incitement may reduce the incidents of incitement in prison – resulting in a safer environment, reduced harm and improved oranga/wellbeing. However, this may be tempered by the implications for the individuals who are prosecuted for incitement.
Contributes to safety	0 Impairs the safety of prison by allowing the incitement of offences, including assault, to go unchecked.	+ The incitement offence will better assist sites to administer safe and secure prisons.
Overall assessment	0	+ This option will support a safer prison environment, with a more astute listing of prosecutable offences and greater clarity of what amounts to unacceptable behaviour in prison. (Recommended option)

Problem B3: people can delay their hearing process by refusing to attend

259. Hearings are set for specific times and days of the week during which Prosecutors and Adjudicators are made available from their other prison duties, or Visiting Justices make themselves available from their legal practices or other employment. Time is limited and there are often a significant number of charges to be heard.

260. Adjournments, when they occur, create a backlog of cases as the hearing must still be heard later, this extends the wait time for others to be heard.

261. Not all adjournments permitted under the current settings are reasonable or appropriate and there is an opportunity to limit some of these adjournments to reduce wait times for all hearings.

262. If an accused person is not present for their hearing the hearing is adjourned and rescheduled. This is an appropriate safeguard in many instances when a person may be unable to attend for a legitimate reason, including a health appointment or court appearance.

263. However, under the current settings this safeguard can be manipulated by the accused continually refusing to attend without reasonable justification. Behaviours of concern here are instances of the accused person intentionally delaying the hearing, where they refuse to attend due to their objection to the type of charge or that they have been charged at all, or their prioritisation of other activities over their hearing attendance. Refusing to attend their hearing in these instances unnecessarily impacts the effectiveness (including timeliness) of the hearing process for themselves and others with hearings pending.

264. Corrections does not have nationwide data for how often prisoners refuse to attend hearings. What is known is that the occurrence is sporadic, often occurring in clusters across units and wings and postponing progress for other hearings.

265. The requirement for the accused to be present for a hearing to proceed is inconsistent with the Criminal Procedure Act 2011 (CPA). Section 119 to 124 of the CPA specifies that a hearing, including a sentencing hearing, may proceed without the defendant present for less serious offending not punishable with a term of imprisonment. Although the internal disciplinary process is a civil process there are similarities to processes for less serious criminal offending. This is due to the nature of the sanctions imposed and the CPA may provide a useful framework for what is appropriate.

Scope options have been considered within

266. We have discounted a non-regulatory option for problem B3. The only non-regulatory option to reduce delays caused by prisoners refusing to attend hearings would be the use of force to ensure attendance, or incentives to encourage attendance. The use of force in such circumstances would be a disproportionate response, would not fit within the wider legislative settings, is unlikely to encourage the required participation in proceedings, or improve wellbeing, and could lead to greater resistance and increased risk of harm to prisoners or staff. The use of incentives may lead to perverse outcomes, including an initial refusal to attend a hearing in the knowledge that an incentive will be forthcoming when they do comply.

Options for problem B3: people can delay their hearing process by refusing to attend

Option One – status quo

267. Under the status quo, any person accused of a disciplinary offence would continue to be required by the Act and Regulations to be present at their misconduct hearing.

Option Two: allow hearings to proceed in the absence of the person accused in limited circumstances

268. Option Two is to amend legislation to allow hearings to proceed in the absence of the person accused with misconduct, in some circumstances.

269. Qualifying circumstances would include if the person continued to refuse to attend without a justifiable reason after they have been ordered to attend by the Prosecutor. Or if their behaviour while present is seen to disrupt proceedings by the Adjudicator or Visiting Justice.

270. Hearings would not be permitted to proceed in the absence of the accused where they have a justifiable reason for not attending. A justifiable reason would include, but would not be limited to, having a conflicting health appointment or court appearance.

271. The Adjudicator or Visiting Justice would need to be satisfied that proceeding with the hearing in the absence of the accused would not be contrary to justice.

272. If a hearing proceeded in the absence of the prisoner, but the prisoner had successfully requested permission to be legally represented at the hearing under section 135 of the Act, the accused may be legally represented at the hearing, but it must only proceed under a Visiting Justice.

The CPA and United Kingdom provide models to follow

273. This amendment could be modelled on the CPA, which allows hearings to proceed in the absence of the accused for less serious offences. The CPA provides specific safeguards to ensure a trial does not proceed if the defendant's absence would prejudice their defence, or if the court is satisfied that it would be contrary to the interests of justice to do so.

274. Under the CPA, the defendant may request a retrial if they are found guilty in their absence. Rather than a retrial, under Option Two the ability to appeal the outcome of a hearing heard by an Adjudicator would remain as per the current settings, with the appeal heard by a Visiting Justice.

275. Under the status quo there is no similar statutory right of appeal against the decision of a Visiting Justice, although the decision can be judicially reviewed in the High Court. To better align with the CPA, Option Two will enable a re-hearing to be requested where the outcome of an absentia hearing heard by a Visiting Justice is disputed, or if the Visiting Justice is satisfied that the accused person had a reasonable excuse for non-attendance that was not known at the time of the hearing, or a re-hearing is in the interests of justice.

276. Similarly, in other jurisdictions with comparable sanction systems, hearings can continue without the person attending. In the United Kingdom for example, hearings can continue if the accused refuses to attend or the Adjudicator refuses to allow them to attend on the grounds of "disruptive behaviour or an ongoing dirty protest". In these instances, the Adjudicator must record why they proceeded with the hearing in the person's absence, including why it was just and fair.

Public feedback on this option

277. Many submitters argued that cases should not proceed without the person charged being present, although some suggested it may be acceptable in some instances with strict criteria and safeguards.

278. The Law Society indicated that because trials in absentia are available under the CPA that there can be no objection to this being available during misconduct hearings in

prison when a person refuses to attend. But if it is used, the criteria should be no more rigid than what is available under the CPA e.g., when disruption to the process is proven, not just suspected. The wording of this option was subsequently amended to better align with this feedback.

279. The Human Rights Commission was firmly against any change to allow hearings in absentia, emphasising that the status quo best upholds the right of prisoners to be heard at hearings in accordance with the principles of natural justice.

280. The Auckland District Law Society suggested that hearings in absentia are inconsistent with the wellbeing focus of *Hōkai Rangi*.

281. There was relative agreement among respondents that if hearings in absentia do proceed there must be absolute transparency with clear checks and balances, including ensuring that all proceedings and decisions are accurately recorded. One respondent argued that the accused should retain a right not to attend the hearing if they do not wish to.

How do the options compare to the status quo/counterfactual?

Problem B3: people can delay their hearing process by refusing to attend

	Option One – status quo	Option Two – allow hearings to proceed in the absence of the charged person in limited circumstances
Complies with human rights obligations	0 The current disciplinary process complies with ICCPR, NZBORA and the Mandela Rules. However, due to delays in the process not all hearings are able to be heard promptly which may engage Mandela Rule 41(1).	0 The key principles of natural justice (s 27(1) NZBORA) are maintained, and some delays in the process will be remedied enhancing compliance with aspects of Mandela Rule 41(1). The accused person maintains the right to choose to attend their hearing and be heard, or to engage a legal representative (Mandela Rule 41(3)) to attend and speak on their behalf. Additionally, the merits of the case presented will be considered equally regardless of the accused being present and avenues for appeal (s 27(2) NZBORA) remain unchanged. Although this process is civil not criminal, it is understood these changes could also be seen to engage s 25(e) NZBORA and 14 (3)(d) ICCPR, the right to be present at one's trial and to present a defence.
Transparency and accountability	0 The current disciplinary process ensures transparency and accountability of the system. However, allowing the accused to refuse to attend their disciplinary hearing does not enable those who offend to be held accountable.	- Ensures all those who offend against discipline are held to account through the disciplinary process. There will be requirements for the hearing to be appropriately recorded, including the reason for the hearing proceeding in the absence of the accused, and this must be communicated to the accused. Despite this process, there may still be some reduced transparency for the accused regarding the process and outcome. However, the ability to appeal an outcome of an Adjudicator hearing will remain, and the ability to request a re-hearing of cases heard by Visiting Justices in absentia will be introduced.
Practical to implement and responsive	0 A blanket rule that the accused must be present is easy to enforce. However, allowing those who refuse to attend their disciplinary hearing, without an appropriate justification, to have their case adjourned can delay all pending hearings at a site.	+ A decision-making framework will need to be designed and implemented to guide when cases can proceed in the absence of the accused. Changes to training and guidance for Adjudicators and Visiting Justices, and system updates will be required. The change will allow the Adjudicator or Visiting Justice to be responsive to the needs of the person and the nature of the refusal to attend when considering whether to proceed in their absence.
Contributes to better outcomes for Māori	0 As it is the status quo, the outcomes for Māori are kept the same.	0 Enabling hearings to proceed when the accused refuses to attend will not impact outcomes for Māori. The result of the individuals hearing will be no different. However, allowing hearings to proceed in these instances will improve the hearing wait times for others which may improve oranga/wellbeing outcomes for Māori in prison.
Supports oranga/wellbeing of the people we manage	0 Those accused who are awaiting hearings can become frustrated by the delays in having their charges resolved and the potential implications on their rehabilitation and reintegration and eligibility for parole.	+ More timely hearings will improve oranga/wellbeing by ensuring matters are resolved more swiftly.
Contributes to safety	0 Impedes the safety of prison by undermining the credibility of the disciplinary process among staff and people in prison.	+ Enabling more disciplinary hearings to proceed in a timely manner will better support sites in the administration of safe and secure prisons.
Overall assessment	0	+ This option will support hearings to be resolved in a more effective and timely way while implications on human rights are managed through careful implementation, monitoring and responsive guidance for Adjudicators and Visiting Justices. (Recommended option)

Problem B4: remote hearings are an essential tool that would benefit from futureproofing

282. Hearings should be held in person as the default and whenever possible. However, remote hearings are an essential tool for effective and timely hearing and appeal processes to continue when participants (such as Visiting Justices or lawyers) cannot access a site or unit, or the accused has been transferred to a different site before the hearing can take place.

283. Remote hearings are enabled by section 139 of the Act, which states that hearings can be run using 'video link'. Although 'video link' is sufficiently broad to encompass existing practices (remote hearings are often currently run through MS Teams via a laptop computer) it is not technologically neutral enough to allow for responsivity to technological advancement, or changes to best practice or prison environments.

284. Remote hearings have become an increasingly common scenario since the COVID-19 pandemic and will continue to be a useful option into the future. To ensure remote access to hearings continues to be an option for Corrections it is essential that the most suitable technology can be adopted when it is required.

285. For example, during the COVID-19 pandemic, Corrections relied on the Epidemic Preparedness (COVID-19) Notice 2020 to alter its legislative settings and allow remote hearings to proceed via audio-links.[25] In this instance, audio-links were only available if it was not reasonably practicable for a participant to attend in person and video link was unavailable or unable to be used, unless the Adjudicator or Visiting Justice considered that its use was contrary to the interests of justice. Having a more technologically neutral Act that allowed such operational changes from the outset, with the same resulting safeguards, would have resulted in faster implementation.

286. The wording in the Act is also misaligned with the adjournment setting in the Regulations, which refers to the use of hearings being held by "the way of telephone conference, electronic device, or video link" which has caused confusion.

287. There is an opportunity to align the Act with the Regulations and future-proof the settings for remote hearings to allow for changes in technology.

Scope options have been considered within

288. There is no non-regulatory option to allow any increased flexibility in the types of technology used to facilitate remote access for hearings, as currently the methods of holding hearings must be authorised in legislation.

[25] Corrections Act 2004, schedule 7 Disciplinary proceedings – s139A, Mode of hearing or reaching decisions *[repealed]*; section 139A was inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 no. 13), and expired on 20 October 2022.

Options for problem B4: remote hearings are an essential tool that would benefit from future proofing

Option One – status quo

289. Under the status quo, remote hearings would continue to be conducted via video link only. Any variation to the technology mediums used to facilitate remote hearings in the future would require legislative change.

Option Two – better enable remote hearings to adapt to technological developments and changes in the prison environment

290. Option Two is to amend the Act to technologically neutral wording to allow hearings to proceed via remote access. This change will allow the introduction of greater flexibility in the types of technology used to facilitate remote hearings, when appropriate to do so.

291. As a safeguard a hearing would only be able to proceed via remote access if the Adjudicator or Visiting Justice considered it is not contrary to the interests of justice to do so. Based on section 5 of the Courts (Remote Participation) Act 2010, the decision to proceed would be required to take into consideration and record in writing:

- the nature of the proceeding
- the availability and quality of the technology that is to be used
- the potential impact of the use of the technology on the maintenance of the rights of parties to the proceeding, including
    - the ability to understand and be understood by all participants
    - the ability to assess the credibility of witnesses and the reliability of evidence presented to the hearing, and
- any other relevant matters.

292. In recognition of the limitations of audio only hearings, the amendment to the Act will specify that audio links can only be used if it is not possible to facilitate a hearing in-person or via video link. This function had been provisionally available under the now repealed Epidemic Preparedness (COVID-19) Notice 2020.

293. To ensure clarity across Corrections' remote hearing settings the Regulations would also be amended to match the new wording in the Act. In-person hearings will remain the default and preferred method of conducting a hearing.

Public feedback on this option

294. Respondents were largely in favour of increased availability and use of remote hearings for the disciplinary process. It was thought increased use and availability of remote hearing technology may enable greater availability for lawyers to attend hearings, encourage greater participation in the process for some prisoners and allow hearings to go ahead if a person is transferred to a different prison ahead of their hearing.

295. However, many expressed that in-person hearings should remain the default, and strict criteria was needed to ensure that the use of remote hearings does not impinge on the human rights of the accused, or inhibit natural justice. Namely, there needs to be assurances that the general use of remote hearings or use of specific technologies will not unduly or unfairly exclude a person from the hearing, especially disabled persons or those with language or learning difficulties.

How do the options compare to the status quo/counterfactual?

Problem B4: remote hearings are an essential tool that would benefit from future proofing

	Option One – status quo	Option Two – better enable remote hearings to adapt to technological developments and changes in the prison environment
Complies with human rights obligations	0 The disciplinary process including the remote hearing process complies with ICCPR, NZBORA and the Mandela Rules.	+ With appropriate safeguards to ensure a fair hearing, remote hearings can improve the timeliness of natural justice (s 27(1) NZBORA). This change aligns with Mandela Rule 41(3) and may allow the accused to be present and to defend themselves at a hearing even if they have been transferred to a different site. Although this process is civil not criminal, it also supports s 25(b) NZBORA the right to be tried without undue delay; and 14(3)(c) ICCPR, the right to be tried without undue delay.
Transparency and accountability	0 The current remote hearing process is well defined and transparent. Hearing outcomes may be appealed.	+ Improved transparency will be provided by clarification of when remote access technology can be used (including that the Adjudicator or Visiting Justice must not consider it contrary to the interest of justice), and a requirement for these details to be recorded. The ability to appeal the outcome of a hearing will remain.
Practical to implement and responsive	0 Current settings are limited to 'video-links', and legislative change is required to adopt new technologies for remote hearings.	++ Will future proof the technology that can be used for remote hearings.
Contributes to better outcomes for Māori	0 As it is the status quo, the outcomes for Māori are kept the same.	0 Any change that improves timeliness of hearings will improve oranga/wellbeing outcomes for Māori in prison.
Supports oranga/wellbeing of the people we manage	0 Allowing hearings to be resolved when in-person hearings cannot otherwise proceed supports the oranga/wellbeing of people in prison.	+ More timely hearings may improve oranga/wellbeing by ensuring matters are resolved more swiftly for prisoners and victims. These changes will also ensure this continues into the future.
Contributes to safety	0 Remote hearings allow hearings to proceed safely when it is unsafe to do so in person. They also help to reduce the likelihood of hearing delays which can undermine the safety of sites.	+ Securing remote hearings ability to proceed in a timely manner, through changes to prison environment and technological change will better support sites in the administration of safe and secure prisons.
Overall assessment	0	+ This option will support hearings to proceed even in situations where an in-person hearing is not possible, or video link is not available, and is resilient to future technological change. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem B: the current hearing and appeal process does not enable disciplinary issues in prison to be addressed in a manner aligned with effective justice

296. There are four recommended options to better enable disciplinary issues in prison to be addressed in a more effective manner. The options will build on and enable current operational improvements by further reducing delays in the hearing process where appropriate, providing greater flexibility for more responsive prosecutions and penalties and enabling the use of new technologies for remote hearings. Any improvement in the effectiveness of the disciplinary system will build credibility in the system among prisoners and staff, improve conduct, and potentially reduce the frustrations and stress across sites that inhibit oranga/wellbeing.

Suspended penalties can provide flexibility when this is in the best interests of the person

297. Problem B1: Option Two, to enable suspended penalties, will allow Adjudicators and Visiting Justices greater flexibility in targeting a penalty to the offence and person, to better enable an effective disciplinary process and improved wellbeing and behaviour.

298. In the event that a person fulfilled their suspended penalty period without further offending the original offence will not be recorded as an offence and they would not be subject to the penalty. There are many subsequent benefits for the person, such as continued eligibility for or access to programmes that will improve their rehabilitation or reintegration outcomes.

Introducing an incitement offence will fill an existing gap and improve the efficacy of the disciplinary process

299. Problem B2: Option Two will make it an offence to incite others to commit offences. This recommended option will fill a gap that currently exists for people who are encouraging harm in prison and impeding the good order of prisons and the safety of staff and other prisoners, where this is not already covered by the criminal offences prosecutable by Police.

300. Allowing this to be a recognised and prosecutable offence will likely discourage some incidents of incitement. Any future incident that may be discouraged or diminished will benefit the good order of prisons and the safety of staff and prisoners.

301. Establishing a clear offence for incitement of others and the types and duration of sanctions that may be imposed will provide clarity around this offence as required under Mandela Rule 37.

Allowing hearings to proceed in the absence of the accused if they refuse to attend

302. Problem B3: Option Two will allow hearings to proceed in instances when the accused person refuses to attend, if the Adjudicator or Visiting Justice considers it would not be contrary to a just hearing.

303. As opposed to the status quo, the recommended option will result in a more effective process by preventing the accused from dictating the speed of justice, ensuring if they are guilty that their penalty is imposed promptly, while maintaining their rights to legal representation and to appeal the outcome.

Ensuring remote hearings are available when they are needed

304. Although in person hearings will remain the preferred and default option for hearings, Problem B4: Option Two will ensure that Corrections can continue to use remote

hearings as and when needed, and more quickly adopt technological changes when appropriate.

305. This recommended option will ensure that the hearing process is not unduly delayed when in-person hearings are not practical or appropriate. For example, hearings and appeals can proceed if a Visiting Justice or external Adjudicator is unable to be present on site, or a prisoner is unable to leave their unit, or has been transferred to a new site before the hearing can take place.

306. Current remote hearing technology is not always suitable when a person has difficulties being heard or making themselves understood. Enabling easier adoption of new technology will mean that with the appropriate safeguards Corrections could better facilitate participation in the disciplinary process for people with disabilities, or linguistic limitations as the suitable technology becomes available. This would better align Corrections practices with the Convention on the Rights of Persons with Disabilities (CRPD), particularly regarding access to justice (Article 13), and accessibility (Article 9).

What are the marginal costs and benefits of the option?

307. The costs and benefits assessed below are for the combined suite of options to improve the effectiveness of the disciplinary process.

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	There is a low one-off cost to prisoners, who will need to adjust to the changes to the disciplinary process, including the new incitement offence. The introduction of the new incitement offence may lead to an ongoing increase in the number of people being charged, or successfully prosecuted for their misconduct. People charged with an offence will no longer be able to delay their hearing or avoid a subsequent penalty without an acceptable reason.	Medium	Low We do not have data to determine how many people will be prosecuted for the new incitement offence. However, monitoring and evaluation will allow any overapplication to be curbed if necessary.
Māori in prison	As we know Māori are overrepresented in prison, there is a risk that they will be disproportionately prosecuted for the new incitement offence and the number of hearings proceeding in absentia. There is also a risk that they will be underrepresented in the number of suspended penalties imposed.	Medium	Low This is an assumption, but over time, there will be ongoing monitoring and evaluation of the changes to identify and appropriately respond to any negative disproportionate outcome for Māori.
Department of Corrections, including staff	There will be a low one-off cost for developing and delivering training to staff. There will be a low one-off cost for Corrections staff to familiarise themselves	Low	High Existing systems for training and development and

	with new guidance and undertake training where required. These costs will be covered within baselines as they form part of business as usual activity. There will be sporadic costs associated with the adoption of new remote hearing technologies and any necessary training when these are needed.		the associated costs are part of business-as-usual activities.
Other government agencies	Ministry of Justice may need to cover sporadic one-off costs to adopt new technology for Visiting Justices to participate in remote hearings and the costs of this are optional.	Low	Medium Based on work to date with Visiting Justices.
Legal representatives & advisory services	One-off cost to familiarise themselves with the changes. Sporadic one-off costs to adopt new technology for remote hearings and that will be dependent on how the Ministry of Justice chose to adopt the new technology for those hearings presided over by a Visiting Justice.	Low	Low Corrections does not have oversight of training and development of legal representatives.
Visiting Justices and Royal Federation of NZ Justices' Association	One-off cost for Visiting Justices to familiarise themselves with the changes. The Royal Federation will need to update their Visiting Justice training, and will be supported by Corrections. The costs of this are unknown but expected to be covered within baselines as this would form part of business as usual activity. Sporadic one-off costs to adopt new technology for remote hearings as above if the Ministry of Justice chooses to introduce it.	Low	Medium This is based on work to date with Visiting Justices and the Royal Federation.
Total monetised costs			
Non-monetised costs		*Low-medium*	*Low-medium*
Additional benefits of the preferred option compared to taking no action			
Prisoners	Allowing hearings to proceed in absentia will prevent delaying hearings for others and may provide a quicker resolution for victims, when relevant. Suspended penalties will give people an extra opportunity to improve their behaviour, which could benefit them and others in prison. In addition, they may improve accessibility of rehabilitative and reintegrative programmes. Allowing easier adoption of advances in technology for remote hearings may lead to accessibility improvements for those who are not able to participate fully through existing remote hearing mediums.	Medium	Low We do not have data to determine how many people will benefit at this stage.

Māori in prison	There is no additional material benefit to Māori beyond that for prisoners – see above.	Medium	Low
Department of Corrections, including staff	These changes will enable hearings to take place remotely when in-person hearings are not possible. This will better assist the maintenance of prisons in a safe manner. Quicker turnaround for hearings may provide a quicker resolution for staff victims, when applicable. More timely justice will improve the credibility of the disciplinary process for staff. The new incitement offence will clarify how to prosecute this type of behaviour.	Medium	Medium Based on existing practices and outcomes.
Other government agencies	Police may benefit from a reduction in referrals for some incitement offences.	Low	Medium Based on work to date with Police.
Legal representatives and advisory services	They should benefit from improved remote hearing technologies, which should help improve accessibility and experience to hearings when unable to represent clients in-person.	Low	High Based on work to date with legal representatives and advisory services.
Visiting Justices and Royal Federation of NZ Justices' Association	Visiting Justices should benefit from improved remote hearing technologies that improve accessibility and experience. Reducing delays to hearings by allowing hearings to proceed in the absence of the accused will maximise the availability of Visiting Justices.	Medium	Medium Based on work to date with Visiting Justices and the Royal Federation.
Total monetised benefits			
Non-monetised benefits		*Medium*	*Medium*

Delivering the option

Problems B1-B4: the current hearing and appeal process does not enable disciplinary issues in prison to be addressed in a manner aligned with effective justice

How will the new arrangements be implemented?

Suspended penalties will require training and periodic review

308. The introduction of suspended penalties will need to be accompanied by guidance and training for Adjudicators and Visiting Justices about which situations it is appropriate to impose a suspended penalty. Guidance for prisoners and their legal representatives will also need to be updated.

309. Corrections IOMS will need to be updated to allow details of the suspended penalty to be recorded and monitored.

310. Limiting the period that can be suspended to 3 months rather than 6 months (as used in similar jurisdictions) will reduce the likelihood that a suspended sentence will have any unintended impact on security classifications, which are reviewed at least once every six months during someone's sentence.

The list of disciplinary offences will need to be updated along with all relevant parties

311. Prosecutors will require clear and standardised guidance to define the incidents and circumstances in which an incitement offence could be prosecuted, and Adjudicators and Visiting Justices will need updated guidance around appropriate penalties.

312. Updated guidance will also be required for those who refer to the existing list of disciplinary offences including prisoners, legal representatives and wider staff.

313. IOMS will need to be updated to allow details of the offence to be prosecuted, recorded and monitored.

It must be clearly recorded that the accused has been given the opportunity but refused to attend their misconduct hearing

314. Implementation will involve updating the training and guidance for Prosecutors, Adjudicators and Visiting Justices to detail the limited circumstance in which misconduct hearings can proceed in the absence of the accused and what must be considered to ensure the interests of justice. Proceeding in the absence of the accused person will only be permitted when the Adjudicator or Visiting Justice is satisfied that the accused has refused without justification to attend and proceeding with the hearing in their absence will not be contrary to justice.

315. Updated guidance for prisoners and legal representatives will also be required.

316. IOMS will need to be updated to allow details of the hearing to be recorded including why the accused refused to attend, confirmation that the Adjudicator or Visiting Justice was satisfied proceeding with the hearing was not contrary to justice, and confirmation the person was informed of the outcome and penalty if relevant.

New technologies will need to be assessed before use for remote hearings

317. Remote hearings are already happening under the existing legislative settings. If any new technologies to better facilitate remote access are identified in the future, operational processes and guidance will need to be updated to implement this.

318. Consideration will also be given to any implications on security, accessibility, and principles of natural justice from the new technology, and any required upskilling of staff and guidance for prisoners and their legal representation.

How will the new arrangements be monitored and evaluated?

Suspended penalties and the new incitement offence will be monitored and evaluated regularly, with an internal review of the process after approximately 12 months

319. Records will be kept on when suspended penalties are used and in what circumstances and how often the new incitement offence is prosecuted. An internal review of suspended penalties and the new incitement offence will be undertaken approximately 12 months after they are implemented (timing for all reviews and evaluations are discussed in the final section of this RIS). The review will assess whether suspended penalties are being used in a consistent and fair manner across cases and sites and to assess if they are resulting in any changes to behaviour. The review will also assess whether the new incitement offence is being prosecuted in a consistent and fair manner across cases and sites.

Hearings that proceed in absentia will be monitored and evaluated regularly

320. The hearing process, including evidence that the accused was provided an opportunity to attend and a detailed reasoning for why they refused, will need to be recorded and supplied to all parties with the finding of the absentia hearing.

321. The impacts of the changes will be regularly reviewed internally to ensure hearings are only proceeding with the accused absent when it is appropriate and just to do so.

Monitoring and evaluation of remote hearings will continue

322. All details of remote hearings will be suitably recorded, including justification for why a remote hearing was necessary. These details need to be made available to those charged with reviewing the disciplinary process when requested, including by Visiting Justices.

323. The technology used for remote hearings will be reviewed and updated when appropriate.

Established checks and balances will continue

324. The hearing process will continue to be subject to appeal to a Visiting Justice, or a judicial review in the High Court.

325. The entire disciplinary process will continue to be monitored and evaluated for improvement as part of the Joint Action Plan. The disciplinary process will continue to be subject to reviews by the Inspectorate and the Ombudsman.

Section C: Clarifying processes for the authorisation and use of non-lethal weapons

Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Corrections staff can use physical force in limited circumstances, including non-lethal weapons

326. The legislative parameters for the use of force and non-lethal weapons are set out in the Act and the Regulations.[26] Non-lethal weapons are designed to either temporarily disable or incapacitate a person against whom they are used.

327. These powers can only be used in limited circumstances with staff needing to comply with the processes in the Act, Regulations and Corrections' internal guidance.

328. Staff have a hierarchy of responses available, starting with communication and de-escalation techniques and progressing through to uses of force, including the use of non-lethal weapons. The use of force is only lawful when it is proportionate and necessary to the circumstances, and it must be recorded and reported to the Chief Executive.[27]

Force, including non-lethal weapons, may be used as part of a planned response to an incident, or to react spontaneously to an immediate threat

329. A planned use of force could occur where the immediate safety of the staff and prisoners involved is not at risk and the situation is contained, but a response is needed to prevent further escalation of the situation.

330. Force can also be used spontaneously. For example, in the case of a fight between prisoners, staff may decide to use force to stop or prevent physical harm to either prisoners or staff, if other attempts at de-escalation are not effective.

Cabinet can prescribe new non-lethal weapons in the Regulations

331. Cabinet can amend the Regulations to authorise the use of non-lethal weapons, if the Minister of Corrections is satisfied that the:

- use of that kind of weapon or restraint is compatible with the humane treatment of prisoners, and

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[26] Corrections Act 2004, s 85(4) – Use of non-lethal weapons. An example related to the use of batons is that a prison manager can only issue batons if they reasonably believe:
- there is a serious threat to prison security or to the safety of any person
- the use of batons will reduce or eliminate the serious threat; and
- other means of reducing or eliminating the serious threat have been or are likely to be ineffective.

[27] Corrections Act 2004, s 88 – Reporting on use of force, weapons, and mechanical restraints.

- the potential benefits from the use of the weapon outweigh the potential risks.[28]

Pepper spray is authorised for use in spontaneous and planned uses of force, while batons can only be deployed for a planned use of force

The Regulations authorise the use of pepper spray as a non-lethal weapon

332. Corrections is authorised to use three different pepper spray delivery mechanisms:
    - a handheld device with a seven metre range that is carried routinely by Corrections Officers who have received necessary training and is available for spontaneous use (the Sabre MK-3)
    - a handheld device with a ten metre range for planned use of force (the Sabre MK-9), and
    - a handheld device with an extension wand for planned use of force (the Sabre MK-9 with extension wand, or "Cell Buster"). This is a dispersed fog delivery mechanism that can be used under doors or through windows.

333. The Regulations set out a framework for the use of pepper spray, which includes:
    - **restrictions on the use of pepper spray:** only trained Corrections officers may be issued pepper spray and that pepper spray may only be issued at the direction of a prison manager
    - **the specific circumstances when a Corrections officer can draw and/or use pepper spray (under the use of force framework):** it should be used in a way that minimises pain and injury to the prisoner, so far as that is consistent with protecting prison security or the safety of any person, and
    - **storage requirements:** to ensure that pepper spray is kept and stored securely.

The Regulations also authorise batons as a non-lethal weapon

334. Currently, Corrections exclusively uses a 24-inch long aluminium baton with a side handle.

335. A prison manager may issue batons if they reasonably believe that there is a serious threat to prison security or to the safety of any person, the use of batons will reduce or eliminate the threat, and other means of eliminating the threat have been or are likely to be ineffective (see Appendix Three).[29]

336. Internally, our practice is that batons are only issued to Advanced Control and Restraint (ACR) Teams. Like pepper spray, there is a clear regulatory framework governing the use of batons, which is supplemented by operational guidance. The Regulations set out:
    - restrictions on carrying batons
    - requirements for the issue and storage of batons, and
    - restrictions on the use of batons.[30]

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[28] Corrections Act 2004, s 85(3) – Use of non-lethal weapons and s 87(3) – Restraint of prisoners.

[29] Corrections Regulations 2005, reg 122 – Issue and storage of batons.

[30] Corrections Regulations 2005, reg 123 – Use of batons – only a staff member who has been issued a baton may draw or use it only if the prison manager's approval has been obtained,

The legislative framework for the use of non-lethal weapons is also reinforced by operational guidance to support best practice

337. Corrections Officers are trained to use force, including using non-lethal weapons, using the TEN-R process that focusses on de-escalation first (see Appendix One).

338. The TEN-R process is supported by the Custodial Practice Manual (CPM), the Prison Operations Manual (POM), and the Tactical Options Manual of Guidance (TOMG). Together, this internal guidance provides a framework to support the safe and humane use of force and non-lethal weapons. This includes information on conditions for use, post-incident response, and other procedures mitigating health and safety risks.

339. For example, the CPM details conditions around pepper spray use and provides that pepper spray must not be used in some situations, for example, where a person has a firearm. The CPM also details procedures to follow after pepper spray has been used, which is supported by procedures in POM. TOMG contains further guidance, and details on the decontamination process following the use of pepper spray.

What is the policy problem or opportunity?

Problem C: The processes for authorising and using non-lethal weapons could be strengthened to provide greater assurance that their use is humane and that the benefits outweigh the risks

340. As noted, section 85(3) of the Act states that in order to introduce a new non-lethal weapon, the Minister must be satisfied that its use would be compatible with the humane treatment of prisoners, and that the potential benefits of use outweigh any potential risks.

341. Most of the guidance relating to the use of authorised non-lethal weapons is currently set out in internal policy. However, the Act, Regulations and operational policy do not clearly specify what information the Minister needs to receive when making decisions to satisfy the section 85(3) test; there is no explicit requirement for the Minister to sight internal policy or other relevant information. This internal guidance often contains key information about the humane use of the non-lethal weapon and is therefore important information to inform Ministerial decision-making.

342. The current lack of clarity about how to meet section 85(3) requirements carries risk. The Minister could seek Cabinet approval to introduce non-lethal weapons without having the level of detail needed to be satisfied that its use is compatible with the humane treatment of prisoners, or that the benefits outweigh the risks.

343. It is important to provide greater clarification on this process, so that going forward, Cabinet can be confident that new non-lethal weapons are properly authorised.

9(2)(h)

[redacted]

unless this is not practicable in the circumstances. In addition, a staff member must use the baton in a way that minimises pain or injury to the prisoner, as far as it is consistent with protecting prison security or the safety of any person.

9(2)(h)

9(2)(h)

What objectives are sought in relation to the policy problem?

347. The objective in relation to this problem is ensuring that non-lethal weapons are authorised appropriately and the Minister is able to be satisfied that the use of a non-lethal weapon is compatible with the humane treatment of prisoners, and the potential benefits outweigh the potential risks.

348. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/Consideration
Complies with human rights obligations	Consistency with New Zealand's international obligations, such as the Mandela Rules and the United Nations Human Rights Guidance on less lethal weapons in law enforcement.
Transparency and accountability	Provides an appropriate level of detail in the Act and Regulations that is reviewed by the Minister and Cabinet, can be used to meet the s 85(3) test, and provides accountability.
Practical to implement and responsive	Practical for Corrections staff to understand and implement, and for the Minister to review, and responsive to any changes in best practice over time.
Contributes to better outcomes for Māori	Understands and mitigates negative impacts on Māori, and considers te Tiriti principles such as active protection.
Supports oranga/wellbeing of the people we manage	Ensures that the wellbeing of all prisoners is supported as far as is possible by ensuring that non-lethal weapons are used as humanely as possible and that incidents are resolved effectively to support prisoners' to have a positive environment to live in.
Contributes to safety	That corrections officers have a clear understanding about how to respond effectively to complex situations that may require using non-lethal weapons. This

	enables a safe prison environment for staff and prisoners.

Deciding upon an option to address the policy problem

What scope will options be considered within?

We ruled out highly detailed regulations for health and safety requirements

349. Initially we considered inserting all internal guidance from the POM and CPM relating to health and safety requirements for the use of non-lethal weapons into the Regulations. This was ruled out of scope as we did not consider it feasible, or in line with good legislative design, to insert this level of detail into the Regulations. It would also have limited our ability to make practice improvements in a timely manner.

We have not publicly consulted on the problem definition and our proposed solutions

350. This is because they were developed after consultation on the wider package of legislative changes had begun. We have, however, taken on board commentary from stakeholders about the need to keep prisons safe and recent engagement with the courts, the Ombudsman, and Human Rights Commission on our use of pepper spray.

What options are being considered?

Problem C: The processes for authorising and using non-lethal weapons could be strengthened to provide greater assurance that their use is humane and that the benefits outweigh the risks

Option One – status quo

351. Under option One, Corrections would continue to provide the Minister and Cabinet with material that it considers would satisfy section 85(3) of the Act when needed to authorise non-lethal weapons in the Regulations.

Option Two – Corrections introduces an operational requirement for the Minister to sign off on all operational guidance for a new non-lethal weapon

352. Option Two is for Corrections to implement an operational policy that would request the Minister sign off on the operational detail drafted for POM and TOMG on how a proposed non-lethal weapon would be used, as part of decision making to authorise non-lethal weapons. This would also include, for example, when there are significant updates to non-lethal weapons that have already been authorised.

Option Three – amend the Act to set out that the Minister needs to consider relevant operational policy and information relating to the humane use of a non-lethal weapon in order to be satisfied of the requirements in section 85(3)

353. Option Three is to amend the section 85(3) test in the Act to clarify that the Minister must consider particular information when deciding whether to authorise the use of a new non-lethal weapon.

354. This would include requiring Corrections to provide the Minister with detail from or summaries of operational policies and other relevant information that demonstrate that the use of the proposed non-lethal weapon is compatible with the humane treatment of prisoners, and that the potential benefits of use outweigh any potential risks.

355. While we propose the requirement be high-level, it would, for example, at present include extracts from policies such as the TEN-R policy, the CPM, and the POM and

require the Minister to receive technical information about the physical health impacts of a non-lethal weapon.

Option Four – amend the Regulations to include information about the procedures that must be followed before, during and after non-lethal weapons are used

356. Option Four is to amend the Regulations to include more detail around what constitutes safe and humane use for all existing and future non-lethal weapons. Amendments to the regulations would only be to include requirements that are enduring and fundamental to managing the use of non-lethal weapons This is because, as noted by the court in *Cripps v Attorney-General*, greater safeguards and transparency are provided by having a prescriptive list of requirements for the use of non-lethal weapons set out in the Regulations.

357. The Regulations would be amended to contain some general use provisions that would apply to all non-lethal weapons. For example, this might include stating that:

- non-lethal weapons used for planned use of force must be informed by medical advice on the mental or physical health conditions of the person to whom it would be used against (if relevant) and its compatibility with the humane treatment of that person
- all practicable efforts must be made to avoid the use of force and non-lethal weapons against a prisoner (this means using other de-escalation techniques first)
- a warning must be given before a planned control and restraint operation, and
- non-lethal weapons may not be used in cases of passive resistance unless there are reasonable grounds to believe that there is an imminent threat of injury or harm to any person[31].

358. In addition to the general provisions, because each non-lethal weapon fundamentally differs in nature and is subject to its own health and safety processes (e.g., pepper spray and batons), specific provisions would be added for the use of each non-lethal weapon. These would again only be enduring requirements that are less likely to change over time with best practice.

359. Under this change, there would be clear restrictions and mitigations for pepper spray that are likely to include the following:

- the use of pepper spray should be restricted where the prisoner is at risk of falling, at risk of other physical injury and cannot be continually observed, or they are in an area that cannot be accessed quickly
- if pepper spray is used for a planned use of force, a decontamination area must be set up and a registered health professional must be present to provide health oversight during the use of force, with a medical assessment conducted within three hours of pepper spray being used, and
- pepper spray must not be used where breathing is or could be restricted.

360. Likewise, there would be specific restrictions on batons. These would likely include:

- batons must not be used on the head, spine, sternum, or groin. It may also be appropriate to include gender specific restrictions, such as breasts for women, and

[31] We may add this change in passive resistance to either s 85(2) of the Act, or regulation 119A of the Regulations, but are still working on final drafting with PCO.

- batons must only be used by staff members who have been trained in the use of the baton, and the baton is used in a manner that is consistent with that training.

361. In the future, if any new non-lethal weapons are authorised, the Regulations would include similar specific provisions for their use.

Stakeholder comments on the options

362. As noted above, in *Cripps v Attorney-General,* the court concluded that it would provide greater safeguards and transparency to have a prescriptive list of requirements for the use of non-lethal weapons set out in the Regulations. This is because, as the court stated, Regulations that "authorise the use of a non-lethal weapon must also contain any conditions or restrictions on the use of that weapon, at least to the extent that:[32]

    - they are not obviously encompassed by the statutory restrictions on the use of force, and
    - the existence of those conditions or restrictions could make a difference to whether or not the use of weapon will be humane (and so to the Ministers' section 85(3) assessment)."

363. The last point on the general list under Option Four above relating to passive resistance, supports commentary from the Human Rights Commission and the Ombudsman. These key stakeholders have repeatedly advocated for the removal of Corrections' ability to use pepper spray on prisoners when they passively resist. During targeted consultation in early 2022 on pepper spray regulation changes, the Human Rights Commission also specifically recommended reviewing the system and policy for pepper spray, and a wider review on the use of force.

[32] *Cripps v Attorney-General* [2022] NZHC 1532 at [208].

How do the options compare to the status quo/counterfactual?

Problem C: The processes for authorising and using non-lethal weapons could be strengthened to provide greater assurance that their use is humane and that the benefits outweigh the risks

	Option One – status quo	Option Two – the Minister must sign off on operational guidance for a new non-lethal weapon	Option Three – amend the Act to set out what particular information the Minister needs to consider in order to be satisfied of the requirements in s 85(3)	Option Four – amend the Regulations to include information about the procedures that must be followed before, during and after non-lethal weapons are used
Complies with human rights obligations	0	+ Expected to facilitate robust decision making for the introduction of non-lethal weapons, as the protocols set out in operational guidance would help the Minister assess whether a non-lethal weapon complies with New Zealand's domestic and international human rights obligations, such as Mandela Rule 82 and the United Nations Human Rights guidance on less-lethal weapons in law enforcement.	+ As for option two. This could potentially result in fewer non-lethal weapons being authorised inappropriately in the future.	+ More prescriptive regulations on the processes to be followed before, during and after non-lethal weapons are used provides greater assurance that prisoners' human rights are respected (rights described in option two). Better complies with UN guidance on less lethal weapons, which states that Regulations for less-lethal weapons in custodial settings "should establish rules and procedures for use that comply with international standards".
Transparency and accountability	0	+ This option will provide some enhancements to transparency and accountability because the Minister would have the detail necessary to make robust decisions to authorise non-lethal weapons.	++ This option would support more intensive Ministerial and Cabinet scrutiny and provide greater assurance that non-lethal weapons would only be authorised if they can be used in a safe and humane manner especially as these decision-making documents are publicly released.	++ Same as Option Three. This option would invite more scrutiny and provide greater transparency and legal accountability on the use of non-lethal weapons, as the minimum processes that should be followed would be laid out more clearly in Regulations.
Practical to implement and responsive	0	- Would not necessarily be the most efficient use of the Minister's time, as they would be requested to sign off on extensive operational detail, rather than only material that is relevant to their decision at a strategic level.	++ Practical to implement because it would not require operational change and enables ministerial decision making to be well supported for any future decisions.	+ The Regulations would be amended in the future when future non-lethal weapons are introduced. There is a low risk that it is less resilient than the status quo (as the Regulations would contain more detail) but as we propose to only include high level more enduring principals for the use of non-lethal weapons, we think the option will be enduring and responsive to change.
Contributes to better outcomes for Māori	0	0 Unlikely to have a material impact on Māori, but wider changes under Hōkai Rangi are working to help address the disproportionate impacts Māori experience in the corrections system. In this case, they are overrepresented in the use of force.	0 Same as Option Two.	0 Same as Option Two and Three.
Supports oranga/wellbeing of the people we manage	0	0 The processes for non-lethal weapons would remain unchanged, so this is unlikely to have a material impact on the wellbeing of people in Corrections' management.	0 Same as Option Two.	+ Same as for Option Two and Three, but the additional inclusion of a requirement relating to passive resistance will give decision makers and oversight entities greater assurance that corrections officers have more clarity about when to not use non-lethal weapons when prisoners are passively resisting.
Contributes to safety	0	+ Ensures that the Minister has considered all the information required to authorise this weapon as safe, which leads to it being used safely	++ Same as Option Two.	++ Same as Option Two and Three.
Overall assessment	0	0 While this option contributes to safety, it does not do so as well as Options Three or Four, and is also less practical as it uses ministerial time inefficiently.	+ This option is preferred as it best provides transparency and accountability and best contributes to safety. . (Recommended option)	+ (Recommended option) This option is preferred as it would supplement Option Three and provides accountability and transparency.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem C: The processes for authorising and using non-lethal weapons could be strengthened to provide greater assurance that their use is humane and that the benefits outweigh the risks

364. Corrections considers that both Options Three and Four will best address the problem definition.

365. Option Three, to amend section 85(3) in the Act to require the Minister to consider certain information when authorising the use of non-lethal weapons, is the first preferred option.

366. This option meets the policy objective of ensuring non-lethal weapons are introduced appropriately. While Option Three would not require the Minister to oversee and sign off on operational protocols, it would require Corrections to provide such materials to the minister to support informed and robust decision making.

367. This option should also support greater transparency and accountability, as it invites greater Ministerial scrutiny of a proposed non-lethal weapon and whether it complies with the section 85(3) test.

368. Option Four, to amend the Regulations to include information about the procedures that must be followed before, during and after non-lethal weapons are used, would complement Option Three.

369. The major advantage of Option Four is that it provides more transparency to Ministers, Parliament, custodial staff, and the general public regarding the policies for and use of non-lethal weapons in prisons.

370. By setting out these core processes in the Regulations, it is also likely to provide greater assurance that non-lethal weapons are being used appropriately and safely, which key stakeholders and oversight entities such as the Ombudsman and Human Rights Commission have repeatedly said are important. While we have not consulted with these two entities on our specific understanding of the problem and options in this RIS, we expect to work with them on the drafting of any legislative and regulatory changes.

371. Option Four also supports good legislative design because there would be clear requirements and safeguards in the Act for the use of non-lethal weapons supported by more detail in the regulations.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Government	The preferred options would require closer Ministerial and Cabinet consideration when non-lethal weapons are introduced. Cabinet, particularly the Minister of Corrections would have more detail to support decisions to introduce new non-lethal weapons, which would take more time.	Low	Low

Department of Corrections, including staff	There will be some costs associated with following the new legislative and regulatory process when new non-lethal weapons are introduced. This would form part of BAU activity and for the most part, the changes would formalise existing practice- both to inform good decision making, and to use non-lethal weapons appropriately.	Low	Medium Guidance is already in place for requirements on the use of non-lethal weapons.
People in prison	No material impact.	N/A	N/A
Wider public	No material impact.	N/A	N/A
Total monetised costs			
Non-monetised costs		*Low*	*Low*
Additional benefits of the preferred option compared to taking no action			
Government	These changes are expected to provide the Government with more assurance that they are approving non-lethal weapons based on robust policy advice, including strict requirement for use, with risks managed effectively. Cabinet, particularly the Minister of Corrections would have more detail to support well in-formed decisions when introducing new non-lethal weapons.	Low	Medium The court commented in *Cripps vs Attorney-General* that the additional level of detail provided to the Minister in 2021 was appropriate to support good decision making.
Department of Corrections, including staff	Staff may benefit from having extra clarity on the use of non-lethal weapons, as some key operational protocols would be reinforced in the Regulations. For the most part, the changes would formalise existing practice- both to inform good decision making, and to use non-lethal weapons appropriately.	Low	Medium Guidance is already in place for requirements on the use of non-lethal weapons.
People in prison	People in prison may have greater confidence in the process for authorising new non-lethal weapons, as the formal process would be strengthened to ensure the Minister of Corrections and Cabinet have the right level of detail to make well-informed decisions. Increased assurance that non-lethal weapons would be used humanely, with operational protocols set out in the Regulations.	Low	Low We have not engaged with people in prison on this subject.
Wider public	The wider public would have greater assurance that the Government would only authorise new non-lethal weapons when it is appropriate to do so.	Low	Low We have not engaged with the public on this subject.
Total monetised benefits		*N/A*	

Non-monetised benefits		*Low*	

Delivering an option

How will the new arrangements be implemented?

372. The new processes for providing relevant detail to the Minister when authorising new non-lethal weapons will be embedded in Corrections' operational guidance as well as in the practices of policy teams that are responsible for providing advice on the authorisation and use of non-lethal weapons.

373. Both the legislative and regulatory changes will reflect current operational practice but any changes that are consequently made to POM and the CPM under either option will be communicated to staff to ensure prison staff understand when changes come into effect and their impact.

374. In terms of changes to requirements relating to passive resistance, regulatory change will require changes to operational guidance and training. For example, a trainer could use the example of a prisoner who smashes their room, including the TV, so that there is glass everywhere. They may be passively resisting but there is a risk that they may use the broken glass to harm themselves, or may use it to harm staff. Pepper spray may need to be used to remove the prisoner from the room so that staff do not have to enter to physically remove them when there is a safety hazard like broken glass. Further examples may be used to give staff members further opportunities to learn what constitutes active resistance and what constitutes passive resistance, and how to use judgment in order to determine when there may be a threat of harm to a person.

375. Staff would also be supported to write comprehensive incident reports, which would have records of whether force was used, and whether it was in response to a case of active or passive resistance that could lead to harm to a person. Reports would contain details of the situation, what the staff member observed and why they reasonably believed that there was a threat of harm from the prisoner. It is likely that updates to the templates that staff use will be required to support best practice.

How will the new arrangements be monitored, evaluated, and reviewed?

376. Corrections continually monitors the use of force across the prison network, with clear reporting requirements. This includes aggregating data on use of force incidents involving non-lethal weapons annually to evaluate the nature of the incidents, whether it was appropriate to use non-lethal weapons in each event, and whether the force used was proportionate. The only operational change that would result from the proposed changes relates to more specific requirements for the use of non-lethal weapons for prisoners who are passively resisting as this data is not currently recorded so specifically. We will monitor the use of force reports to understand how this is being implemented across the network and identify any training gaps or sites that need support to use best practice.

377. As we review these incidents, we will consider whether operational guidance should change, as well as whether any additional changes are needed to the Regulations.

378. The regulatory policy team will update its own practices to ensure that any decision-making required by Ministers and Cabinet is informed by the required information. This will take place in discussion with other government agencies as needed and as is standard practice for policy changes.

Section D: Improving long-term outcomes for Māori

Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Operational changes underway guided by *Hōkai Rangi* are aimed at helping to address the overrepresentation of Māori in the corrections system

379. Currently, Māori make up approximately 53% of the total prison population and approximately 43% of those serving a sentence of home detention, despite being only approximately 17% of the New Zealand population.[33] Māori women are even more disproportionately represented in the corrections system, forming approximately 65% of the women's prison population, and approximately 47% of women serving a sentence of home detention.[34]

380. In 2017, the Waitangi Tribunal in its report *Tū Mai Te Rangi!* found the Crown, through Corrections, had no specific plan or strategy to reduce Māori reoffending rates, no specific target to reduce Māori reoffending rates, and no specific budget to meet this end. The Tribunal concluded that the Crown had not prioritised the reduction of the rate of Māori reoffending and was in breach of its te Tiriti obligations to protect Māori interests and to treat Māori equitably.[35] The Tribunal also noted that Corrections risked a breach of its partnership obligations if Corrections failed to develop partnerships with iwi and hapū.

381. As noted earlier, *Hōkai Rangi* was launched as Corrections' organisational strategy in 2019 and its goal addresses the Tribunal's findings. We heard during public consultation with iwi and Māori partners that the six strategic areas of change in *Hokai Rangi* should effectively drive change within Corrections. That change is underway guided by the aspirations set out in *Hōkai Rangi*. It includes, for example:

- The ongoing roll out of Māori Pathways programmes in three sites: these have been co-designed and are being co-governed with relevant iwi and hapū in those districts.[36]
- Development of a new 96-bed mental health and addiction unit, Te Wai o Pure, at Waikeria Prison: the new operating model is being developed with mana whenua and Te Whatu Ora, with a vision focused on wellness and wellbeing.
- Commissioning of research on alternative, kaupapa Māori approaches to administering community sentences.

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[33] 4,243 Māori in prison and 719 Māori serving a sentence of home detention as of 31 October 2022.

[34] 314 wāhine in prison and 126 wāhine serving a sentence of home detention as of 31 October 2022.

[35] Waitangi Tribunal, *Tū Mai Te Rangi!* (2017), p. 86.

[36] Māori Pathways programmes include a range of initiatives that support the corrections system to be more effective by using kaupapa Māori and whānau-centred approaches. This includes programmes being co-designed with whānau, iwi and hapū Māori.

- The development of a bicultural framework to guide the work of Psychology and Programmes within Corrections and an increase in collaboratively designed rehabilitation programmes.

Corrections is working with Māori to improve rehabilitation and reintegration outcomes for Māori in the corrections system

382. At an operational and strategic level, Corrections is working with Māori to build meaningful and purposeful relationships. This includes through Te Poari Hautū Rautaki Māori (the Māori Leadership Board), relationships with iwi at a regional level, and relationships with mana whenua at different prison sites and in the community including the Māori Pathways programmes at three sites.

383. Working with Māori is critical for improving outcomes. For example, a 2018 review found that cultural responsivity has a significant impact on engagement with an intervention, and that "recent research suggests that culturally integrated correctional programmes may also directly promote desistance from crime as 'protective factors'".[37] An example of this approach is the work taking place in some of our special treatment units and Te Tirohanga – Māori focus units.

Corrections also recognises the importance of access to culture and involving whānau in the management of prisoners

384. Corrections is also contributing to improved rehabilitation and reintegration outcomes by delivering its programmes and services in a way that recognises the power and strength of whakapapa to enhance a sense of belonging and identity with the community. As part of this, cultural activities are provided to people in prison: for example, providing and facilitating access to te reo Māori and tikanga Māori programmes. We also enable kaumatua to work in prisons as "kaiwhakamana" and involve whānau in aspects of sentence management where appropriate and are increasing support for the provision of whānau and family wrap-around services. Access to these initiatives enhances supportive links that people have with their communities prior to release from prison.

Māori in the corrections system currently experience inequitable health and education outcomes and Corrections is working to address this operationally

385. In prisons, health and education are two areas that, although not always directly related to someone's offending, can have an impact on rehabilitation and reintegration outcomes, as well as overall wellbeing. This means that Corrections has an established role in providing and facilitating access to health and education for prisoners.

    - For health, this includes providing primary health care, and mental health and addiction services for prisoners. It includes 243 nurses across the 17 Corrections-operated prisons and further contracted services from general practitioners and others. In 2022, government invested a further $16 million over four years in our health services. As part of implementing *Hōkai Rangi*,

[37] A. Hughes, Aotearoa New Zealand cultural interventions: Current issues and potential avenues, November 2018. *Practice: The New Zealand Corrections Journal*, "A 2020 evaluation of a kaupapa Māori alcohol and other drug service," Te Ira Wāhine, also found that the programme was having a positive impact on wāhine inside prison and in the community. For example, of those women who were sentenced, three quarters had progressed to a low security classification since completing Te Ira Wāhine and there was a decline in misconducts across this group. See K. Hamilton and B. Morrison, "Te Ira Wāhine: Aromatawai," March 2020.

Corrections is currently developing a kaupapa Māori-centred approach to health services, including delivering rongoā Māori.[38]

- Corrections facilitates access to, and in some cases funds, literacy and numeracy programmes, industry training, drivers' licence training, vocational short courses, and self-directed learning and programmes funded by the Tertiary Education Commission (TEC) for prisoners. In 2021 to 2022, for example, our education tutors worked with prisoners to prepare 3,175 unique learning pathways and over 300 industry instructors were working to provide training in prison industries.[39]

386. People who are serving sentences and orders in the community access health and education through the general health and education systems and therefore Corrections has less of a role to play in these areas.

Health inequities exist between Māori and non-Māori in prison

387. Prisoners generally have poorer health and education outcomes than people in the community, and Māori in prison have poorer health and education outcomes compared to non-Māori in prison.

388. As at September 2021, 18% of Māori over 65 years of age in prison have been diagnosed with chronic obstructive pulmonary disease (COPD) compared to 11% of non-Māori/non-Pasifika. For wāhine Māori in prison, 48% have an asthma diagnosis compared to 36% of non-Māori/non-Pasifika, and seven percent of tāne Māori in prison have a gout diagnosis compared to three percent of non-Māori/non-Pasifika.[40]

389. Although the number of disabled prisoners reflects that of the general population, there is a higher proportion of Tāngata Whaikaha Māori – Māori with disabilities – in prison than in the general population.

Educational inequities exist between Māori and non-Māori in prison

390. Māori have inequitable access to education and educational achievement compared with other population groups and subsequently experience poorer outcomes when in the community. Prisoners tend to have lower levels of educational achievement compared to the general population, and prisoners with Māori whakapapa are more likely to have limited literacy and numeracy skills.

391. Of prisoners who had their literacy level recorded as of 6 December 2021, 8.1% of Māori had a literacy rate of step six compared to 17.6% of New Zealand Europeans in prison. 43.2% of Māori in prison were at literacy step three or below, compared to 27.9% of New Zealand Europeans in prison.[41]

392. Similar inequities exist in relation to numeracy levels. As of 6 December 2021, 22.7% of Māori in prison had a numeracy rate of step 6 compared to 32.7% of New Zealand

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[38] This work is based on the health sector principles articulated in the Pae Ora (Healthy Futures) Act 2022 and Whakamaua, the Ministry of Health Māori Health Action plan.

[39] Department of Corrections, *Annual Report, 2021-2022*, p. 74.

[40] Corrections health outcomes and equity reporting, September 2021.

[41] Literacy and numeracy rates for people in prison are measured on a scale of one to six, where step six is high literacy or numeracy and step one is low literacy or numeracy. People at step six would be able to participate in tertiary education while people at step one would struggle to understand and complete basic application forms.

Europeans in prison. 20.5% of Māori in prison were at numeracy step three or below, compared to 13.5% of New Zealand Europeans in prison.

393. A contributing factor to poor educational achievement and engagement is the high rates of neurodiversity in the prison population including neurodevelopment conditions such as foetal alcohol spectrum disorder or acquired brain injuries by way of various trauma. Data suggests that Māori are disproportionately represented in this population.[42]

Changes under *Hōkai Rangi* and increased cultural responsivity will promote better outcomes for Māori

394. Improved access to and choice of programmes and services, including those designed with Māori, are expected to help to address equity, provide better reintegration pathways, opportunities for rehabilitation and contribute to reducing reoffending. We are working to develop further measures so we can better track these outcomes.

What is the policy problem or opportunity?

Problem D: There is now an opportunity to further embed these changes into the corrections system to support improved rehabilitation and reintegration outcomes for Māori over the long-term

395. We have identified four focus areas where Corrections has existing statutory responsibilities to provide access to services and where significant inequities exist between Māori and non-Māori in the corrections system as outlined above.

396. We consider there is an opportunity for Corrections to make further changes in these areas to improve rehabilitation and reintegration outcomes for Māori.

Working with Māori at a strategic and operational level

397. As discussed in the context section, working with Māori can support Corrections to improve the way it operates, including how it designs and delivers programmes and services. While Corrections already works with Māori at different levels of the organisation, there is an opportunity to strengthen this approach to support long-term sustained change as is necessary to address the issues the Waitangi Tribunal raised.

398. A number of submissions from iwi partners commented that iwi and mana whenua must be involved in the co-design, delivery and monitoring of programmes and services.[43] For example, the submission from Te Rūnanga o Ngāi Tahu acknowledged that working with Māori "must be a foundational change within the corrections system". Other organisations also provided feedback that Māori need to be more included in decision-making processes for the corrections system.[44]

399. The Human Rights Commission noted that Corrections needs to ensure that "adequate recognition is given to Māori rights to determine for themselves rehabilitative measures to develop the social and health-based conditions of their people in accordance with their cultural traditions".

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[42] Data from the Washington Group Short Set on Functioning Questionnaire (WGSSQ), which has been added to the Initial Health Assessment that Corrections uses in prisons.

[43] See meeting notes from Ngāpuhi, Ngāti Rangi, Ngāti Hine, Te Rūnanga o Toa Rangatira and Te Rūnanganui o Te Ati Awa, September 2022.

[44] See submissions from Ināia Tonu Nei, the Māori Law Students' Association of Victoria University of Wellington and the Human Rights Commission.

Access to culture, whānau and whakapapa

400. We also recognise that increasing access to culture for people in prison and increasing the involvement of whānau can have significant benefits for rehabilitation and reintegration outcomes. We therefore consider this is an area where Corrections needs to consider options for sustained improvement.

401. There was strong support from public consultation for increasing access to culture and whānau involvement for Māori in prison. Some submitters raised the point that connecting people who have offended to their culture will reduce recidivism by helping people to heal and improving rehabilitation outcomes[45]. We recognise that there are also te Tiriti responsibilities in these areas; for example, to actively protect Māori cultural practices.

402. In addition, among submitters who emphasised the importance of whānau connections, 53(b)(i) engaged with men at Northland Region Corrections Facility who provided feedback that meaningful contact with whānau, meetings and contact with iwi and hapū, and a greater number of tikanga Māori programmes and activities were particularly important to them.

Addressing inequities in education and health

403. Improving education outcomes was selected as a focus area because it is an area where significant inequities exist for Māori. Corrections also has existing statutory requirements to deliver and facilitate access to education services, although we do not solely deliver these services and work with other agencies and providers.

404. Corrections is required by the Act to provide healthcare that is 'reasonably equivalent' to the standard of healthcare available to the public. We consider that Corrections has a role in addressing health inequities experienced between Māori and non-Māori in prison as it delivers this function. The Waitangi Tribunal found that the Government's need to improve its health services for Māori is a te Tiriti responsibility.[46]

405. Given the existing inequities in relation to education and health, we consider that there is a need for Corrections to consider options to improve how we deliver these services, in order to improve outcomes for Māori.

There is an opportunity to clarify how the Crown, through Corrections, will give effect to its te Tiriti obligations

406. In addition to improving outcomes for Māori in these areas, there is an opportunity to create a more coherent statement of how te Tiriti and its principles, and the principles in the Corrections Act and the Public Service Act, work together to guide Corrections. This could support Corrections and its staff to understand and take a consistent approach to meeting te Tiriti responsibilities across the work that the Department does.

407. Without a coherent statement of what te Tiriti means in a Corrections context, any additional changes to improve outcomes for Māori may be viewed by the public as only necessary to respond to the current needs of Māori in the corrections system, rather than because they are ongoing te Tiriti obligations.

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[45] This includes five survey responses and the written submission from the Human Rights Commission.

[46] The Waitangi Tribunal's report on stage one of the Wai2575 Health Services and Outcomes inquiry found that the Crown has breached te Tiriti by failing to design and administer the current primary health care system to actively address persistent Māori health inequities and by failing to give effect to te Tiriti's guarantee of tino rangatiratanga (autonomy, self-determination, sovereignty, self-government).

408. The most recent precedent from another agency clearly stating how te Tiriti and its principles work in a sector, is the Pae Ora (Healthy Futures) Act 2022, which sets out requirements on a range of actors in the health system in order to give effect to the principles of te Tiriti and sets out health sector principles.

409. However, other agencies such as the Ministry of Education and Oranga Tamariki have made similar amendments that have provided those agencies with a more coherent approach to their te Tiriti responsibilities. For example, the Education and Training Act 2020 includes that it is a purpose of the Act to establish and regulate an education system that honours te Tiriti and supports Māori-Crown relationships, and includes clear provisions setting out the te Tiriti responsibilities across different parts of the education system. It is too early to see the impacts of these changes.

The problems and opportunities in this section have been informed by technical experts as well as public consultation

410. These problems were initially identified with a group of technical experts and then tested through public consultation. Initial analysis was carried out in discussion with our technical experts' group about the current key areas within the corrections system where there is a particular need to improve outcomes for Māori and for which Corrections has responsibilities.

411. Our technical experts group included kaupapa experts and academics:

- Khylee Quince, Dean of Law at AUT and a member of the New Zealand Parole Board
- Veronica Tawhai, Associate Professor and Pūkenga Tiriti at Massey University
- Paul Hamer, historian and member of the Waitangi Tribunal
- Pieri Munro[47], co-chair of Te Poari Hautū Rautaki Māori

412. We held five hui with this group between November 2021 and February 2022, to discuss what the Crown's te Tiriti obligations are in the corrections system, how the Department should honour te Tiriti, and whether legislative change would be appropriate to embed these requirements in an enduring way.

413. During public consultation 137 people responded to questions about the problems in response to a public survey. 52% strongly agreed or agreed that Corrections had accurately captured the problems above regarding specific areas where Corrections needs to improve outcomes for Māori. 33% neither agreed nor disagreed and 15% disagreed or strongly disagreed that the problems had been captured accurately.

414. In addition to survey responses, 24 written submissions were received on this topic and seven hui[48] were held where feedback was given. Several submissions commented that they supported the acknowledgement by Corrections of the areas where further work was needed to improve outcomes for Māori.[49]

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47 Note that Pieri Munro replaced Paul Hamer in this group in February 2022 after Paul Hamer withdrew when he was appointed to the Waitangi Tribunal's justice kaupapa inquiry.

48 These hui included those with: Ngāpuhi, Ngāti Rangi and Ngāti Hine in Kaikohe in September 2022, Te Rūnanga o Ngāti Whātua and Te Uri Hau Trust in Auckland and 53(b)(i) in Auckland in September 2022, and with Serco.

49 This included submissions from the Salvation Army, the Howard League Canterbury and Wellington, the Health and Disability Commissioner.

What objectives are sought in relation to the policy problem?

415. Our objective is to improve the rehabilitation and reintegration outcomes of Māori in the corrections system and assist Māori and their whānau to achieve their full potential. We also seek to ensure that the Crown's te Tiriti obligations to Māori are clearly defined in a corrections context.

416. These objectives will require the corrections system to improve the way it delivers programmes and services over the long-term. Improving people's wellbeing through access to culture, quality healthcare and education will ultimately contribute to improved rehabilitation and reintegration outcomes.

417. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights obligations	Assists the Crown towards consistency with the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). UNDRIP is non-binding, but the government is working towards the aspirations set out in UNDRIP.
Transparency and accountability	Clarifies how Corrections will support the Crown to meet its responsibilities under te Tiriti and increases accountability for meeting these responsibilities.
Practical to implement and responsive	Practical to implement across roles in Corrections and at both a strategic and operational level. Is responsive to change over time.
Contributes to better outcomes for Māori	Tangibly improves outcomes for Māori in the corrections system and assists the Crown to meet its te Tiriti responsibilities; for example, through supporting Māori leadership, improving whānau connections, increasing access to Māori culture for prisoners, and improving health and education outcomes for Māori in prison.
Supports oranga/wellbeing of the people we manage	Improves the mental and physical wellbeing of all people in the corrections system as more programmes, activities and services are informed by kaupapa Māori approaches, with a greater focus on holistic wellbeing needs of the individual.
Contributes to safety	Contributes to more effective rehabilitation and reintegration outcomes and therefore improves public safety.

Deciding upon an option to address the policy problem

Problem D: There is now an opportunity to further embed these changes into the corrections system to support improved rehabilitation and reintegration outcomes for Māori over the long-term

What scope will options be considered within?

418. Many submissions from public consultation raised the issue of Corrections needing to implement more training for staff on kaupapa Māori approaches to managing sentences.[50] The Public Service Act 2020 requires the Chief Executive of Corrections to develop and maintain the capability of the public service to engage with Māori and to understand Māori perspectives. Therefore, we have not considered additional options for change in this space, but workforce development is discussed in the implementation section.

419. We ruled out of scope an option to insert a general te Tiriti provision into legislation without making other more specific amendments to the Act. This is no longer considered best practice legislative design as it is too general and lacks clarity for agencies to understand how to enact it. It would therefore not lead to tangible improvements in the areas identified and would not respond to the opportunity to clarify how the Crown, through Corrections, intends to give effect to te Tiriti.

Other focus areas were ruled out of scope

420. Other areas were considered but not included as part of this problem definition. This is because although inequities exist in other areas, health and education are areas where Corrections already has statutory obligations to provide these services to prisoners, who have minimum entitlements in legislation in accordance with the Mandela Rules. In other focus areas, for example access to housing for people in the corrections system, Corrections has a smaller role to play in comparison to other agencies and does not have the same statutory obligations.

What options are being considered?

Option One – status quo

421. Under the status quo, Corrections will continue to implement *Hōkai Rangi* through operational and strategic changes.

422. Requirements in the Public Service Act around supporting the Crown's relationships with Māori will apply to Corrections, but the Corrections Act will not contain any specific requirements as to how Corrections must improve outcomes for Māori or support the Crown to meet its te Tiriti obligations.

Option Two – amend the Act to reference te Tiriti and create requirements to improve outcomes for Māori

423. Option Two is to amend the Act to directly reference te Tiriti to ensure that the corrections system as a whole gives consideration to Māori outcomes and the principles of te Tiriti. In addition, Option Two would create new provisions that will place specific requirements on Corrections to improve outcomes for Māori.

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[50] Including oral submissions from Ināia Tonu Nei, Ngāpuhi, Ngāti Rangi, Ngāti Hine at hui in September 2022, and written submissions from Te Rūnanga o Toa Rangatira, Te Rūnanganui o Te Ati Awa, and the Human Rights Commission.

424. Under this option, a te Tiriti reference would be incorporated into the Act and three new Corrections specific principles would be added to the Act. These would be for the corrections system to, so far as reasonably practicable, provide for equitable outcomes for Māori, engage and work with Māori, and promote the wellbeing of Māori in the corrections system. These principles are derived from te Tiriti principles but interpreted for a corrections context.

425. The te Tiriti reference and additional Corrections principles would provide a coherent statement in legislation about how te Tiriti and its principles, and the principles in the Corrections Act and the Public Service Act work together to guide the corrections system.

426. These Corrections principles could be inserted into the Act as amendments to existing principles in section 6 or in a separate clause, which would be worked through in drafting and will take into consideration other legislative models such as the Pae Ora (Healthy Futures) Act 2022.

427. This option would amend the Act to create new requirements to improve outcomes for Māori in the areas identified in the problem definition: these are areas that are critical to our delivery of our rehabilitation and reintegration obligations. These new requirements would be additional to the new Corrections principles proposed, which would apply to all aspects of the corrections system. They are, so far as reasonable and practicable:

- **to develop and maintain a strategy that is focused on improving outcomes for Māori, that would include an approach to monitor the strategy's outcomes:** this would respond to the opportunity to improve the way Corrections works with Māori to improve outcomes for Māori, at an operational and strategic level. It would do this by creating a requirement to work with Māori at a strategic level. It would also ensure there is a strategy in place to improve how the corrections system operates, to support improved rehabilitation and reintegration outcomes for Māori. Currently, *Hōkai Rangi* would meet this requirement to have a strategy in place, but it will need to be refreshed in 2024.

- **to ensure that Māori in prison at all sites are able to access cultural activities, such as through the provision and facilitation of learning te reo Māori, tikanga Māori and connecting with whakapapa, and through accessing temporary release for these cultural purposes:** this would respond to the need to increase access to culture and involvement of whānau, to improve outcomes for Māori in prison. It would require Corrections to ensure that there are opportunities for Māori in prison to have access to cultural activities, which is expected to have positive impacts on rehabilitation outcomes. Clarifying that cultural activities would qualify for temporary release would increase access to such activities, although we are aware that Māori are less likely to qualify for temporary release because of other criteria such as security classification.

- **to provide health services within prisons that are built on kaupapa Māori approaches and health sector principles:** this would respond to Māori in prison experiencing inequitable health outcomes, as health services in prisons that are built on kaupapa Māori approaches would be expected to better provide for the health needs of Māori. Prisoners have the right to medical treatment that is reasonably necessary, and Corrections has an existing statutory responsibility for the standard of healthcare available to prisoners to be reasonably equivalent to the standard available to the public. This option would therefore also support Corrections to meet this requirement by delivering health services that are more in line with the Pae Ora Act, including the health sector principles.

- **to provide mātauranga Māori as part of the provision of education programmes in prison:** this would support a response to Māori in prison experiencing inequitable education outcomes. It also betters supports the Crown to meet its te Tiriti obligations by actively protecting mātauranga Māori, which is a taonga. This requirement would be in addition to the general principle of providing for equitable outcomes, which would also impact on the overall provision of education for prisoners. This option will have wider implications for education providers and will require Corrections to work with the Ministry of Education and the Tertiary Education Commission to deliver increased mātauranga Māori.
- **to enable whānau, iwi and hapū to be involved in prison placement decisions, so far as appropriate, reasonable and practicable:** this would respond to the need to increase involvement of whānau for Māori in prison, by providing for more involvement of whānau in placement decisions. It fills a gap in the existing principles in section 6 of the Act, which already provides for an offender's family to be involved in decisions related to sentence planning and management, rehabilitation and reintegration, and planning for participation in programmes, services and activities.

Option Three – an operational te Tiriti statement

428. Option Three would be for Corrections to develop a departmental position statement at an operational level setting out how Corrections will improve outcomes for Māori and give effect to the principles of te Tiriti. This statement would be non-legislative and would not be a legal requirement on the Department but would be strategic and would guide the Department's operations. Other requirements on the Chief Executive under the Public Service Act 2020 would continue to apply and Corrections would still have responsibilities to uphold te Tiriti obligations.
429. This statement could include similar commitments to those set out in Option Two, for example a set of principles to guide Corrections' operations and commitments to take specific actions such as improving opportunities for Māori at all sites to access cultural activities.
430. This operational statement would be published on the Corrections website in order to be transparent and would be supported by guidance to staff about its implementation.

Feedback from public consultation on these options

431. Some submissions from public consultation, particularly from iwi partners, supported the need for legislative change to ensure commitments are fully embedded in the corrections system.[51] Comments included: "unless te Tiriti is factored into legislation, we're on the road to nowhere" and that "*Hōkai Rangi* is like a bandaid that's been placed around the system, but it needs to be embedded".[52]
432. Other submitters were generally supportive of the options proposed, whether they were made through legislation or operational change. There was a small minority of anonymous survey responses[53] that disagreed with the proposals, submitting that they

[51] See record of meeting for Ngāpuhi, Ngāti Rangi, Ngāti Hine, September 2022, and written submission from Ināia Tonu Nei.

[52] Quotes taken from hui with Ngāpuhi, Ngāti Rangi and Ngāti Hine in September 2022.

[53] Ten out of 137 survey responses stated this.

were divisive and that all people should be treated equally regardless of ethnicity. As the focus here is on achieving more equal outcomes we have not amended our proposals in response to this feedback. We recognise that we are working in a bicultural framework to deliver to a multicultural population. The improvements we propose will benefit all people that we manage. For example, a focus on family will also support Pasifika prisoners who have strong family ties.

433. We met with two of our three technical experts on 26 October 2022, and they were supportive of Option Two and suggested some amendments to the wording of the proposed principles. They agreed with the need for legislation to contain a te Tiriti clause to anchor the other more specific amendments.

Te Tiriti specific principles

434. Approximately ten submissions specifically endorsed the idea of embedding te Tiriti principles in the Act and made suggestions for what those principles could be. For example, Te Rūnanga o Ngāi Tahu noted in their submission that there should be legislative amendment to incorporate te Tiriti and that "consideration should be given to articulating how the principles of partnership could be applied specifically in the Corrections context."

435. We have incorporated this feedback into the proposed principles, which are based on those that were discussed with our technical experts' group, those that were suggested most frequently through public consultation, and an analysis of which principles would make the most difference to the operation of the corrections system.

Access to culture and involvement of whānau

436. Between 10-15 submissions, including iwi partners, People Against Prisons Aotearoa and the Auckland District Law Society, commented on the importance of maintaining whānau connections. Two groups specifically supported the idea of ensuring that temporary release can be used for cultural purposes.

437. Approximately three submissions commented that in some situations, reconnection with family and friends can be problematic if they are also involved in offending behaviour. We have amended our proposal to include wording about whānau involvement being appropriate, reasonable and practicable.

Improving Māori health and education outcomes

438. Multiple submissions were supportive of the option for implementing a kaupapa Māori health service, including iwi partners and the Health and Disability Commissioner. The Health and Disability Commissioner and the Māori Law Students Association of Victoria University of Wellington commented on the need to be aiming higher than the current requirement in the Act to provide "reasonably equivalent" healthcare.

439. Submitters were also supportive of taking action to improve Māori educational outcomes including through providing more education programmes and ensuring that those delivering programmes come from a wide range of backgrounds.[54]

[54] This was stated by four survey submissions and the Human Rights Commission.

How do the options compare to the status quo/counterfactual?

Problem D: there is now an opportunity to further embed these changes into the corrections system to support improved rehabilitation and reintegration outcomes for Māori over the long-term

	Option One – status quo	Option Two – amend the Act to reference te Tiriti and create requirements to improve outcomes for Māori	Option Three – an operational te Tiriti statement
Complies with human rights obligations	0	++ Clear legislative requirements will give the best visibility internationally and assist towards consistency with article 18 of UNDRIP, that indigenous peoples have the right to participate in decision-making in matters that would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.	+ An operational statement would assist towards consistency with UNDRIP. However, it may make Corrections priorities less visible than a legislative requirement in the international environment where we are subject to ongoing scrutiny from such as the United Nations.
Transparency and accountability	0	++ Legislative provisions would provide transparency about how Corrections should improve outcomes for Māori and support the Crown to meet its te Tiriti obligations. Legislative provisions would also provide accountability if these provisions were not complied with by enabling litigation to be taken through the Courts in the form of judicial review. That would result in more binding findings on Corrections than such as the Waitangi Tribunal or the United Nations are able to deliver. New legislative provisions would provide a clear basis for the courts to assess decision-making.	+ A publicly available operational statement would increase transparency around how Corrections would meet its te Tiriti obligations. As outlined in Option Two, while accountability mechanisms would exist, such as through the Waitangi Tribunal, there would be less accountability than if legislative provisions were implemented.
Practical to implement and responsive	0	- This option would provide increased clarity around how Corrections will support the Crown to meet its te Tiriti obligations, through pragmatic and specific legislative provisions such as for partnerships and education. A robust implementation plan providing detail on how new legislative provisions would be put into practice operationally would be needed. The operational change that could flow from making changes to the legislation could require careful implementation, for example to incorporate new principles into decision-making and resourcing across the Department, and these changes would be long-term. Legislative amendments will be less responsive to change than Option Three.	0 An operational statement would provide increased clarity around how the Department would support the Crown to meet its te Tiriti obligations. However, in any situation where there was some natural tension between this operational statement and the Act, this could create difficulties in how and whether to implement the operational statement. An operational statement would be easier to amend or update over time.
Contributes to better outcomes for Māori	0	+ New legislative provisions will require Corrections to operate differently in the areas identified where it needs to improve outcomes for Māori. New principles for the Act would flow through to all areas of operation over time, as decisions are made in line with these principles. In the long term, this would support Corrections to embed the strategic direction being taken under *Hōkai Rangi* and ensure that key te Tiriti principles inform decision-making.	+ As for Option Two. However, an operational statement may have less weight than legislative provisions and therefore the impact on outcomes for Māori as a result of any actions made in response to the statement may be slightly smaller.
Supports oranga/wellbeing of the people we manage	0	+ Many of the legislative provisions, while aimed at improving outcomes for Māori, would have benefits for the wellbeing of everyone Corrections manages. For example, involving family in placement decisions and providing kaupapa Māori health services would have benefits for all prisoners. However, resourcing could be prioritised towards programmes and services aimed at improving outcomes for Māori in particular, in order to support more equitable outcomes overall.	+ As for Option Two.
Contributes to safety	0	+ This option will support more effective rehabilitation and reintegration outcomes in the long-term, by creating legislative requirements for Corrections to work with Māori, increase access to culture and involve whānau, and improve health and education outcomes. Improved rehabilitation and reintegration outcomes will reduce the risk of reoffending by prisoners and therefore improve public safety.	+ As for Option Two.
Overall assessment	0	++ This option would provide greater clarity and accountability about how Corrections will support the Crown to meet its te Tiriti responsibilities. A specific provision throughout the Act to improve Māori outcomes would be clearly linked back to and anchored by a te Tiriti reference that includes principles that are relevant for a Corrections context. (Recommended option)	+ This option would provide similar benefits to Option Two but would not be as practical to implement, as confusion could arise about how the statement should be implemented where any natural tension arises with the Act.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem D: There is now an opportunity to further embed these changes into the corrections system to support improved rehabilitation and reintegration outcomes for Māori over the long-term

440. Option Two would not immediately solve the problem identified of needing to improve outcomes for Māori, but would lay the foundation for future shifts in approach and provide clarity about what actions the Department will take to move towards achieving equitable outcomes.

441. While the specific provisions will translate to more of a tangible impact operationally, the te Tiriti reference and new Corrections principles would provide greater clarity and rationale for these requirements and ensure that at a strategic level, it is clear what principles the corrections system needs to be guided by in order to meet its te Tiriti responsibilities.

442. A link to te Tiriti in legislation clearly outlines the underlying justification for developing specific requirements related to outcomes for Māori.

443. Option Three would have a lower level of transparency and accountability compared to Option Two including to our international partners and monitoring entities such as the United Nations. In addition, most importantly, in situations where the operational statement was in tension with the Act, it could cause confusion about how it should be implemented, and decision-makers would need to ultimately align with requirements in legislation.

444. Under Option Two, we recognise that if the Department did not meet the legislative requirements, there would be an increased risk of litigation. We will mitigate this risk by putting in place a solid implementation plan to minimise that risk.

445. However, Option Two will need to be accompanied by clear operational guidance for the corrections workforce, which may have elements that are similar to the operational statement proposed in Option Three. This is discussed in the implementation section below.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners and people on community sentences and orders	There is potential that some prisoners who are not Māori may view the changes as unfairly prioritising Māori.	Low	Medium During consultation, there was some feedback that the proposals were divisive, however these were a very low proportion of responses.

Department of Corrections, including staff	There will be BAU costs to implement the new legislative requirements in our practice guidance, and training to staff. Any costs to develop and maintain a strategy, to provide cultural activities and mātauranga Māori in prisons will be covered in the short term as part of BAU activities, and it is possible that this could require a reprioritisation of resources. Future changes to these services and programmes would create additional costs, although they could be rolled out depending on funding availability. The development of a health service based on kaupapa Māori approaches is already underway so a legislative requirement to provide this will not create additional costs. Amendments to the prison placement process to better involve whānau, iwi and hapū would have costs that would be covered by BAU activities of custodial staff.	Medium	Medium We are aware of the areas where work is already underway and developing guidance and communications for staff is part of business-as-usual activities.
Other government agencies	In order to meet the intent of new legislative provisions, Corrections may need more or different services to be provided by other agencies, such as the Ministry of Health, Ministry of Education and Tertiary Education Commission. The extent of this impact is not well known at this stage. However, the prison population is a small proportion of the total populations that these agencies provide services to.	Low	Low
Friends and whānau of prisoners	No impact	N/A	N/A
Māori partners and service providers	There may be an increased demand for mana whenua and Māori service providers to work with Corrections in designing and delivering programmes and services. We are aware that working with government can place significant demands on Māori partners, which will come at a cost either in terms of funding requirements or waiting times to design programmes and services if partners do not have capacity.	Medium	Medium Based on work to date with Māori partners and service providers.
Wider public	N/A	N/A	N/A
Total monetised costs			
Non-monetised costs		*Medium*	*Medium*
Additional benefits of the preferred option compared to taking no action			
Prisoners and people on community	The proposed legislative provisions are expected to support Corrections to target continue its resources lead to improved rehabilitation and reintegration outcomes for	Medium	Medium Based on evidence presented

sentences and orders	Māori in prison. Many of the changes will also have benefits for all prisoners. However, these will be long-term changes to the corrections system that will take significant time to lead to tangible improvements. Areas such as health and education can require investment over a person's lifetime and Corrections only has an opportunity to improve outcomes if someone is under Corrections' management.		throughout this RIS that access to culture, whānau and improved health and education can improve rehabilitation outcomes.
Department of Corrections, including staff	The recommended option better supports staff and the Department to understand what the Crown's te Tiriti obligations mean for the corrections system and how they will be met.	Medium	Medium There are currently different articulations across the Department about te Tiriti in a Corrections context, so the recommended option will increase consistency and clarity of these approaches.
Other government agencies	The Act applies to Corrections and not wider government agencies. However, through Corrections working with other agencies as part of this option, those agencies may be better able to meet their own responsibilities to improve outcomes for Māori and meet their te Tiriti obligations, for example in relation to health and education outcomes.	Low	Low
Friends and whānau of prisoners	Improved processes to involve whānau, for example in prison placement decisions, will have benefits for whānau relationships with prisoners and would support improved reintegration outcomes upon release from prison.	Medium	Medium We heard from prisoners about the importance of contact with their whānau for maintaining connections while in prison and supporting reintegration upon release.
Māori partners and service providers	Greater commitment from Corrections to work with Māori at a national, regional and site level outcomes.	Medium	Medium We heard from our partners during public consultation that they want to work more with Corrections but find it difficult to get traction with the Department.

Wider public	Long-term contribution to public safety through improved rehabilitation and reintegration outcomes.	Medium	Medium Recidivism rates for Māori are currently higher than for non-Māori, so supporting improved rehabilitation and reintegration outcomes will better support public safety by reducing reoffending.
Total monetised benefits			
Non-monetised benefits		*Medium*	*Medium*

Delivering the option

Problem D: There is now an opportunity to further embed these changes into the corrections system to support improved rehabilitation and reintegration outcomes for Māori over the long-term

How will the new arrangements be implemented?

446. Significant operational work will be needed over time to implement these legislative provisions, some of which is already planned or underway and some of which may be new. This work will be phased.

Work already underway will continue

447. Work will continue across the Department to design and develop programmes and services with mana whenua, Māori entities and communities. This includes, for example the Māori Pathway programmes that are currently being implemented at three sites.

448. The requirement to develop and maintain a Māori strategy is currently met by *Hōkai Rangi*. *Hōkai Rangi* is a long-term strategy for transformational change. Three years into its initial 5-year period, Corrections is now considering how to continue to take *Hōkai Rangi* forward through the next few years.

449. The design of health services in prison informed by kaupapa Māori approaches is already underway and is planned to be at implementation stage by the time new legislative provisions would come into force.

Within the first three months we will start issuing new guidance as needed

450. In the first three months, additional guidance will need to be developed to support staff to understand what the new legislative provisions mean for the Department as a whole and for their role. This would include guidance on how the new principles in the Act would flow through into operational decision making and practice, and consideration of how the Department can demonstrate and monitor compliance with the new legislative requirements.

451. The creation of new legislative provisions will mean there will be a clearer accountability pathway by people being able to litigate through the Courts if Corrections does not implement the requirements in the Act. The ability to take Waitangi Tribunal claims will also remain in place. Our implementation guidance will ensure staff know of these risks and we will work to mitigate them.

452. Over time work will be needed to review the current provision of cultural activities at prison sites and consider ways to ensure that Māori at all sites have access to cultural practices and activities. Operational processes for making decisions about granting temporary release will be updated to reflect that cultural practices, such as marae-based cultural activities, are grounds for temporary release from prison. This provision would apply to all cultures, not only Māori cultural activities.

453. In the first six months, operational processes for prison placement decisions will also be updated to improve how whānau, hapū and iwi can be involved in this decision-making process. This will include developing guidance for staff and information for whānau on the new process.

454. In conjunction with this, an implementation plan will be developed for increasing the provision of mātauranga Māori focused learning, teaching and subjects in prisons. This will involve working with education providers and other public sector agencies to deliver.

There may be ongoing funding and resourcing implications for Corrections to meet the new legislative requirements and some of these costs have already been funded

455. Particularly in fiscally constrained environments, there could be some need to reprioritise resources and shift them towards supporting outcomes for Māori prisoners in order to meet the new principle of providing for equitable outcomes. Overall, this change will lead to greater equity within the prison population but could impact the resourcing of certain programmes and services within prisons. In some cases, funding sources are already in place, such as for the existing Māori Pathway programmes at three sites.

456. That said, we intend to support practical implementation by adding qualifications through drafting that the new legislative requirements must be met where reasonable and practicable in the circumstances. Such qualifications currently exist in several of the principles guiding the corrections system. This will also respond to feedback from some submitters, who stated that legislative amendments must be able to be implemented practically.

457. These qualifications will also assist Corrections to respond to any increase in demand for programmes and services as a result of the new legislative provisions, by ensuring that this must be done where reasonable and practicable. This will ensure Corrections can take into account availability of funding and resources where necessary.

How will the new arrangements be monitored, evaluated, and reviewed?

458. One of the new legislative requirements in the preferred option is for Corrections to develop and maintain a strategy that is focused on improving outcomes for Māori, that would include an approach to monitor the strategy's outcomes.

459. The implementation of this option will therefore include developing an approach to monitoring outcomes for Māori that is likely to be in conjunction with existing annual reporting as well as having more regular updates available when requested. Regular monitoring will ensure that a focus is kept on meeting the new legislative provisions

and implementing them operationally in a way that will lead to tangible outcomes for Māori in the corrections system.

460. In addition, a review of how the new legislative provisions have been implemented and what changes have been made operationally as a result will be carried out approximately 18 months after the legislation comes into effect (timing for all reviews and evaluations are discussed in the final section of this RIS). This could include reviewing changes to operational practice and speaking to staff and prisoners about the impact they feel the changes have had. This will provide an opportunity to make any further operational changes if needed to continue to embed the new provisions.

Section E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative, non-offence focused programmes and services

Terminology used in this section

Remand accused: someone who is remanded in custody while awaiting trial and has not yet been convicted.

Remand convicted: someone who has been convicted and is remanded in custody awaiting sentencing.

Sentenced: someone who has been convicted and is serving a sentence of imprisonment.

Convicted: a term that could include both remand convicted and sentenced prisoners.

Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Rehabilitation and other resources are concentrated on convicted prisoners

461. Corrections provides a range of different programmes and services for all prisoners. For convicted prisoners, this includes rehabilitation programmes focused on offending behaviour, as well as non-offence focussed programmes designed to improve health, education, and cultural outcomes. Remand accused prisoners are likewise provided with access to some services and programmes that are non-offence focussed, and this may include, for example, some heath programmes. Remand accused prisoners cannot participate in programmes of a rehabilitative nature as they have not been convicted of a crime.

462. The provision of programmes and services varies across our prisons and is impacted by the size of a prison's population and its purpose. This means that it may not be practical to run all types of programmes at some smaller sites such as Arohata, which in early 2022 had 89 women prisoners.[55] Most of our male and female prisons hold remand accused and convicted prisoners, but some such as Mount Eden Correctional Facility are used primarily for remand accused prisoners, with that site having 830 men in early 2022.

Current regulatory settings require remand accused and convicted prisoners to be kept separate while in custody unless there are exceptional circumstances

463. Regulation 186(3) requires that there be no mixing of remand accused and convicted prisoners, unless the Chief Executive is satisfied that there are exceptional

[55] We have used data from early 2022 as prison network reconfiguration undertaken in late 2022 has changed the distribution of the prison population, including moving women from Arohata to other women's prisons to free up staff to support Rimutaka Prison. We have used early 2022 data about MECF to be comparable.

circumstances. This does not apply to female remand accused prisoners who are allowed to keep their children with them in prison in Mothers with Babies Units.

464. Under this regulation, ”exceptional circumstances” means an emergency or other factor beyond Corrections’ reasonable control that makes it necessary to mix the groups. This may include health emergencies, prison emergencies such as a fire, flood, or riot, or when the health and safety of prisoners or staff would be threatened if mixing was not permitted.

465. Operational practice requires that where an exemption is granted under this Regulation there is also a plan for ending the mixing so that the mixing is time limited.

466. In keeping with this regulatory requirement, current operational guidance requires prisons to separate remand accused and convicted prisoners through placement in separate units within a prison, or by running split regimes so that remand accused and convicted prisoners housed within the same unit are unlocked at different times.

467. Our Regulations also enable the Chief Executive to approve mixing of young (under 18 years old) and adult prisoners when it is in the best interests of the prisoners concerned and Regulation 186(6) enables our Mothers and Babies Units to include both remand accused and convicted prisoners.

These prohibitions on mixing are in accordance with New Zealand’s international obligations that require us to keep remand accused and convicted prisoners separate

468. The requirement in the Regulations to separate remand accused and convicted prisoners gives effect to principles in New Zealand’s international and domestic obligations, both binding and non-binding, that remand accused prisoners should be subject to different treatment than convicted prisoners.[56]

469. These obligations, especially Article 10(2) of the ICCPR, include requirements to keep remand accused and convicted prisoners separate in prisons, save for in exceptional circumstances, to recognise the presumption of innocence to which remand accused prisoners are entitled. It may also respond to a perceived risk posed by convicted prisoners to remand accused prisoners.

470. In the international law setting, we understand that some limited mixing as described in this section of the RIS is likely to be regarded as exceptional circumstances. For example, where it is not possible to run a parallel programme, where the mixing is limited, and where the remand accused prisoner consents.

Some international jurisdictions have reservations to the ICCPR

471. In jurisdictions similar to New Zealand that have also ratified the ICCPR, such as Australia, reservations to Article 10(2) are in place. The reservation to Article 10(2) in Australia, for example, states that “the principle of segregation [of remand accused and convicted prisoners] is accepted as an objective to be achieved progressively.” In some states in Australia there are situations where mixing of remand accused and convicted occurs. For example, in Victoria, when it is determined that it would be best to support prisoners by accommodating them with a family member, the Sentence Management Division will determine the security and placement of both, allowing them to be classified to the same prison. Once in the prison, this enables the prison to allocate the

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[56] Article 10(2) of the ICCPR, the Mandela Rules R 11 and NZBORA s 25(c). United Nations Office on Drugs and Crime (UNODC), *Notes and comments on the United Nations Standard Minimum Rules for the Treatment of Prisoners*.

two family members to the same unit or cell, irrespective of whether one is sentenced and one on remand. Mixing can also occur in acute mental health units where there is limited infrastructure or where it may be therapeutically beneficial to enable prisoners to mix such as prisoners in long term management.

472. The Netherlands has a reservation to Article 10(2) that recognises that as practice regarding how to treat prisoners is subject to change it is not bound by the prohibition on mixing remand accused and convicted prisoners.[57] In territories with much smaller populations such as Gibraltar, Montserrat and the Turks and Caicos islands, where prisons hold both convicted and remand accused prisoners, the United Kingdom has a reservation to the ICCPR requirement for the separation of remand accused and convicted prisoners.

What is the policy problem or opportunity?

Problem E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative, non-offence focused programmes and services

473. As best practice for the delivery of programmes and services for prisoners improves over time, we want to ensure that we are able to design programmes and services that prioritise prisoner interests. The Regulations do not allow for limited mixing to occur where parallel programmes are not practical to implement or for therapeutic purposes.

474. Given New Zealand's small and geographically dispersed prison population, there are occasions when we cannot provide parallel, non-offence focused programmes to remand accused and convicted prisoners, for example, because there are not enough participants, or it is not financially feasible to do so. This prevents Corrections from designing or implementing innovative non-offence focused programmes and services that prioritise the interests of the prisoner, regardless of their conviction status.

475. Overall, the ban on mixing in international obligations is challenging to implement. It is difficult to know where the boundaries sit between what is permitted and not permitted in relation to mixing in exceptional circumstances. In addition, our international obligations also require Corrections to provide for health, education, cultural and religious needs of prisoners, which can be challenging to provide in some situations without being able to mix. We seek to ensure that the Regulations and the Act include greater clarification about what is permitted.

476. Although New Zealand does not have a reservation to Article 10(2) of the ICCPR, we understand that our international obligations would likely still be met if we were mixing prisoners only in limited circumstances. Where parallel programmes are not practical to run and where there are other contributing factors, such as needing to enable whakapapa connections or supporting someone who has been remand accused for an extended period of time, these would likely be considered exceptional circumstances within the international context and if the prisoner consents.

477. This problem came to light when we began working with mana whenua to develop new innovative services. These include kaupapa Māori, education, and alcohol and other drug programmes that are currently primarily available to convicted prisoners, but that may achieve improved outcomes for both remand accused and convicted prisoners.

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[57] The exact wording is "The Kingdom of the Netherlands subscribes to the principle set out in paragraph 1 of this article, but it takes the view that ideas about the treatment of prisoners are so liable to change that it does not wish to be bound by the obligations set out in paragraph 2 and paragraph 3 (second sentence) of this article."

For example, the Māori Pathway programmes, such as those run at Hawke's Bay Regional Prison, would most effectively support tikanga objectives if designed for both remand accused and convicted prisoners to be able to participate. The programme is based on a social contract with each participant, in which they agree to uphold the tikanga, kawa, and uara/values including whakapapa of the programme. Whakapapa is critical here, and the programme could enable whānau to come together regardless of their status of remand accused or convicted.

478. The ability to mix in some limited circumstances has also been identified as beneficial to prisoners for services such as Te Wai o Pure at the Hikitia mental health and addiction service at the new Waikeria prison, which could operate most effectively with a therapeutic model of care that supports the needs of prisoners, regardless of their conviction status. It is proposed that the operating model of this service be based on prisoners interacting with each other as part of an equal therapeutic community, whether convicted or remand accused.

479. Relationships and connections formed during activities and interventions are integral to the establishment of the success of these types of therapeutic communities. This means that having a cohort of equal participants is likely to lead to better therapeutic outcomes.

The remand population is projected to increase, meaning that it is increasingly important to provide services to people who spend extended times on remand

480. Ensuring treatment and support is available for remand accused prisoners will become increasingly important as the remand population continues to rise, along with the length of time people spend waiting for their case to be heard.[58] In the financial year 2021/2022, 13,939 remand periods ended. Over half of these (7,179) lasted less than six weeks. Just over 10% (1,426) had a duration of six months or longer and it is these people who are most impacted by the inability to mix to participate in non-offence focused programmes and services. We heard during consultation about one prisoner on remand for over 18 months who regularly asked to join a tikanga programme, but was declined as she had not yet been convicted and mixing is not allowed under our Regulations.

Submitters during public consultation agreed that more is needed to support remand accused prisoners

481. People who provided submissions on this topic during public consultation considered any efforts to provide more services for people on remand would be valuable. Many, such as the Law Society, described the limited access to programmes for people on remand as a "significant problem".

482. However, during consultation, we realised that our problem definition needed to be refined. We had consulted on the problem statement that limitations on mixing are contributing to people on remand having less access to programmes and supports in prison. Engaging with stakeholders during consultation highlighted that the real focus is on the need to ensure programmes are designed with the needs of the prisoners at the centre, while considering our international obligations.

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[58] As of 22 July 2022, 28.8% of New Zealand's overall prison population are remand accused. Overall justice sector projections predict that the prison population will increase to around 8,000 with approximately 50% on remand (accused and convicted) by 2031. See *Justice Sector Projections*, 2021.

483. Any changes to allow mixing would be limited to non-offence focused programmes and services, such as Māori Pathways programmes, and likely most targeted at remand accused prisoners who spend long periods of time on remand. Therefore, the larger problem of ensuring more services and programmes for people on remand requires operational change, while across the justice sector efforts are being made to address the high proportion of people on remand in prisons (such as through bail initiatives).

What objectives are sought in relation to the policy problem?

484. We seek the ability to transparently design innovative programmes that put the needs of prisoners at the centre and enable mixing only where parallel programmes are not practical to run and with some limitations in place for how mixing takes place, to safeguard the rights of remand accused prisoners to be presumed innocent. Our objectives are that:

- we are able to prioritise the health and wellbeing needs of prisoners in programme and service design
- we can support evolving models of therapeutic practice in prisons
- Corrections remains compliant with domestic and international obligations.

485. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights obligations	The extent to which the option impacts our international obligations including the Mandela Rules, and the ICCPR. For example, the right to be presumed innocent until proven guilty and the requirement in the ICCPR for remand accused and convicted prisoners to be kept separate, except in exceptional circumstances.
Transparency and accountability	The option ensures that key oversight bodies and other interested parties can see that we are transparently being guided by our international obligations.
Practical to implement and responsive	The option enables services and programmes that are practical to run and able to adapt with best practice.
Contributes to better outcomes for Māori	Enables tikanga approaches as part of innovation to achieve better outcomes for Māori and all prisoners. For example, whakapapa may be a key part of service design.
Supports oranga/wellbeing of the people we manage;	Programmes are designed to meet the wide range of wellbeing needs of prisoners including targeted therapeutic programmes such as alcohol and other drug, or supporting whānau connections.

Contributes to safety	Better programmes that meet prisoner needs, such as alcohol and other drug services, support safer environments.

Deciding upon an option to address the policy problem

Problem E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative, non-offence focused programmes and services

What scope will options be considered within?

Entirely removing restrictions on the mixing of remand accused and convicted prisoners has been ruled out

486. We initially considered entirely removing restrictions on the mixing of remand accused and convicted prisoners from the legislative framework. However, this was ruled out early in the process as the courts could find that the absence of any requirement in the legislative framework could mean that there was still an implied obligation to do so in line with our international obligations.

487. Making this change would also move away from the base assumption that remand accused prisoners should be treated differently than convicted prisoners, based on the presumption of innocence. This would not be in keeping with international obligations under the ICCPR and the Mandela Rules.

The option of only providing a greater number of parallel programmes for remand accused prisoners has been determined to be out of scope

488. We have also spent time considering the option of introducing parallel programmes to remand accused and convicted prisoners and eliminating the need for mixing altogether. The Law Society recommended parallel programmes during consultation where feasible. We have determined that this option alone would not be entirely viable and have removed it from our options analysis.

489. Although parallel programmes will be possible in some situations, it would only partially address some of the criteria that we are working toward. Having parallel programmes would not support innovations such as kaupapa Māori programmes/Māori Pathways, as the parallel options would not support whakapapa connections between prisoners who are family but classified differently as remand accused and convicted. Parallel programmes would also not be able to run at some sites where numbers are too small to achieve the therapeutic objectives and where remand prisoners are in prison for short periods of time thereby making it hard to form the necessary cohort of learners. As remand accused prisoners often come and go from prison (with an average stay of 75 days), this means that should some programmes be run separately for remand accused, they may not have the stable base needed to provide therapeutic benefit, or the participant numbers needed to function properly.

490. In some cases in the future, technology could support prisoners across multiple prisons to attend the same programme virtually. However, that will be complex to organise across the different sites and would only be appropriate for some non-offence focussed services such as for education. It would be unlikely to be effective where building a therapeutic community is required such as for an alcohol and other drug programmes.

491. Parallel programmes would therefore limit the effectiveness of these programmes in some situations.

No changes are proposed to mixing in exceptional circumstances

492. Note there is no change proposed to the ability to mix remand accused and convicted prisoners in exceptional circumstances. This is because there is a need to have the ability to respond to unexpected events or short-term issues such as during a natural disaster, pandemic or event impacting the functioning of prison facilities such as a flood or fire.

What options are being considered?

Option One – status quo

493. The status quo means that the mixing of remand accused and convicted prisoners would continue to be lawful only in exceptional circumstances.

Option Two – legislative and regulatory change to allow limited mixing for kaupapa Māori, religion, education, and therapeutic programmes, with the consent of the remand accused prisoner

494. This option would amend the Act and Regulations to enable remand accused and convicted prisoners to mix only for specific, limited programmes and cultural events relating to kaupapa Māori, religion, education and therapeutic programmes, when it is not possible to run two parallel streams for practical or therapeutic reasons.

495. Remand accused and convicted prisoners would not fully cohabitate and would be separated at all times when they are not actively participating in a session of the type listed above. This would ensure that Corrections meets international obligations to ensure some degree of separation between remand accused and convicted prisoners. Depending on the nature of the programme in question, other appropriate measures will also be used to demonstrate different treatment between the two groups.

496. Consent would be required from the remand accused prisoner for mixing to occur, the interests of the convicted prisoners would also be considered, and programmes that allow mixing would not address offending and would therefore be consistent with the presumption of innocence. If the remand accused prisoner does not consent to mix, this would not impact other aspects of their management.

Public views were largely in favour, with some reservations that we think can be mitigated by careful programme design

497. Generally, submitters stated that time in custody should be used to benefit the person in prison and mixing should be voluntary on the part of the remand accused. Programmes that are non-offence focussed were seen to “be of significant value” such as alcohol and other drug treatment.

498. As noted above, the Law Society noted the complexity with our preferred option to mix remand accused and convicted. The Law Society noted that while the ICCPR requires separate treatment, other articles of the ICCPR require provision of services and programmes. They suggested a preference for “a hybrid of options, where remand accused-specific programmes are offered where available. Where this is not feasible, remand accused could be placed in suitable programmes alongside remand convicted and sentenced prisoners.” Option Two now responds to this feedback by the addition of a requirement that mixing would only occur “when it is not possible to run two parallel streams for practical or therapeutic reasons.”

499. People with lived experience who were surveyed by the Salvation Army had a mixed response to the options. Most felt that it was beneficial to mix, while a few agreed with the sentiment expressed in the following quote: “no remand prisoner should be mixed

with sentenced prisoners ever." Prisoners we spoke to stated that one of the challenges here is that remand accused prisoners can have erratic and disruptive behaviour and for that reason should not be introduced into programmes and services for convicted prisoners. However, we expect the number of remand accused prisoners who would be mixed to be comparatively low, and largely focused on supporting whakapapa connections, or prisoners who spend long periods on remand. We also now propose that the needs of the convicted prisoners are considered alongside the consent from the remand accused prisoner.

500. Several submitters suggested that technology should be a critical tool to expand the access to programmes and services. We consider technology to be a helpful tool that is likely to be used more over time. However, as noted above, this would not always be appropriate for therapeutic community type situations such as Māori Pathways.

501. Other submitters suggested that Corrections should put more resources into providing short-term programmes for remand accused prisoners that are adapted to the length of time they are likely to be in prison. Operationally, that option is already under ongoing consideration, but it does not address our focus on ensuring best practice for the design of innovative programmes and services.

502. Among those opposed to mixing, safety considerations were a key focus. One submitter noted that there is a need to consider the safety of people on remand if mixing occurs and that options should include specific criteria to minimise the discretion that programme providers have. They preferred that parallel programmes be provided to ensure safety and justice was not compromised. They also considered the key task is to reduce the number of remand accused in prison.

How do the options compare to the status quo/counterfactual?

Problem E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative non-offence focused programmes and services

	Option One – status quo	Option Two – allow limited mixing for kaupapa Māori, education, and therapeutic programmes, with the consent of the remand accused prisoner
Complies with human rights obligations	**0** The status quo complies with the parts of the ICCPR, NZBORA and the Mandela Rules that prohibit any mixing of remand accused and convicted prisoners, except in exceptional circumstances.	**0** We consider that this option will likely continue to comply with the ICCPR as mixing will only be in limited, circumstances, such as where parallel programmes cannot be run and mixing would support such things as whakapapa connections. This option also provides additional safeguards to support compliance with the ICCPR. Remand accused and convicted prisoners would remain subject to a certain degree of different treatment such as some variation in meal times and unlock hours. This option aligns with NZBORA, as programmes involving mixing would not address offending, and remand accused prisoners would be required to consent to participate. This maintains the presumption of innocence. This option would not align explicitly with the words of the Mandela Rules, but departures are authorised if they align with the principles and purpose of the Rules.
Transparency and accountability	**0** There is transparency for key oversight bodies and other interested parties that we are not mixing remand accused and convicted prisoners.	**0** Legislation will support Corrections to be transparent about when mixing can occur, including the limitations on mixing. This will be available for key oversight bodies and other interested parties to see and will also note the benefits where we do mix prisoners who are remand accused and convicted, as well as that consent from remand accused prisoners was obtained, and that the needs of convicted prisoners were considered. Prisoners, communities, and family can also see how and when we would provide for prisoners who are remand accused through limited mixing.
Practical to implement and responsive	**0** With a blanket ban on mixing remand accused and convicted prisoners, except in specified exceptions, the status quo is clear but it can be difficult for operational staff to understand the rationale for not being able to mix when they can see potential benefits for the remand accused person. The status quo is not responsive as it does not allow for evolving models of best practice.	**+** Operational guidance at a national level and within programmes and services will be required on a programme-by-programme basis to determine how mixing will occur in individual programmes. However, once this is accomplished, programmes will be practically viable and will better accomplish therapeutic objectives. This option is future focussed and enables Corrections to make long term decisions about programme design that will be more inclusive and adaptable.
Contributes to better outcomes for Māori	**0** The status quo does not always enable programme design that is based on tikanga Māori.	**+** Allows for a tikanga approach such as fostering whakapapa and whānau connections. Best enables kaupapa Māori approaches, and through this contributes to the wellbeing of Māori in prison. However, only a small number of prisoners would be impacted by this option.
Supports oranga/wellbeing of the people we manage	**0** The status quo does not align with therapeutic goals for some remand accused prisoners as they cannot access services and programmes due to the limited numbers of people available to run them at some sites and the short stay of some prisoners on remand.	**+** This option best aligns with therapeutic goals as services and programmes can be designed with the prisoners' interests as the priority, regardless of their status of conviction or remand accused. However, only a small number of prisoners would be impacted by this option.
Contributes to safety	**0** The status quo contributes to safety by keeping remand accused and convicted prisoners separate and protecting the status of remand accused prisoners as innocent.	**+** Improving access to key services such as alcohol and other drug services, or Māori therapeutic approaches will contribute to safer prisoner behaviour.
Overall assessment	**0** This option aligns with international obligations but prevent innovation in the design of non-offence focused programmes and services that could improve outcomes for prisoners.	**+** This option provides safeguards to support alignment with our international obligations. It will most effectively enable Corrections to design programmes around best therapeutic practices, support Māori approaches and partnerships with mana whenua, and focus on individual prisoner needs. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative non-offence focused programmes and services

503. Option Two is Corrections' preferred option as it best allows us to develop future focussed programmes and services that focus on the wellbeing and needs of prisoners, including new therapeutic models of practice. Overall, we anticipate that the new provisions would be used in limited situations, but would be critical in supporting us to develop a small number of best practice services over time, as is occurring for Māori Pathways and the proposed Hikitia service at Waikeria Prison.

504. Under Option Two, wellbeing of prisoners will be the priority for programme and service design, while maintaining the necessary separation of remand accused and convicted prisoners for aspects of programmes, in order to align with international obligations. This could include, for example, different clothing or meal arrangements as well as some variation in unlock hours.

505. This option is consistent with the Crown's Te Tiriti obligations in relation to partnership, the ICCPR requirement for separation, and the intent of the Mandela Rules, as it provides access to the best quality programmes and services, while retaining separate treatment for remand accused and convicted prisoners as the default. By enabling mixing for tikanga Māori approaches, for example, it will better support compliance with aspects of the Mandela Rules such as a requirement that a prisoner's "moral precepts" be respected and their spiritual and health needs are met and based on the "individual treatment needs of prisoners".

506. There is some degree of risk for the government in approving this proposal. We think that it will be a low risk as legislative drafting can ensure that it is clear that mixing will only be for a limited number of circumstances that relate to a prisoner's non-offence focussed needs and only where it is not practical or beneficial to offer parallel services and programmes.

507. Most critically, it will not impact on the presumption of innocence that is at the core of the international prohibition on mixing remand accused and convicted prisoners. Nor does it infringe on sections 23(5) and 25(c) of NZBORA, as the programmes where mixing would take place are non-offence focussed. Our implementation plan (as set out below) will support that very limited use.

508. Based on modelling, demand for programmes would increase slightly if this change were made. However, we do not expect increased demand to affect the ability of convicted prisoners to access these services. The numbers of remand accused prisoners who would participate in mixed services is expected to be comparatively low and as noted largely focussed on supporting whakapapa connections in specially designed programmes, and services such as at Hikitia, or for prisoners who spend lengthy periods on remand.

509. In the 2021/2022 year, for example, over half of the 13,939 people on remand were in prison for less than six weeks, and just over 10% were in prison for six months or longer. The Hikitia facility has 96 beds and as it has not yet started operating we do not know how many individual prisoners will access the service in a year, but we anticipate that some remand accused prisoners would be among those who do. Māori Pathway programmes are also expected to only have up to around 100 participants at any one time across all three programmes, although we anticipate Māori Pathways being rolled out at other sites in future.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Remand accused prisoners	If remand accused prisoners do not give consent, they may not be able to access a programme or service that would be beneficial to them.	Low	Low
Convicted prisoners	There is a small possibility of reduced access to services for convicted prisoners, as there would be increased demand for therapeutic programmes, from both convicted and remand accused prisoners. However, demand modelling also indicates that reduced access to services for convicted prisoners is unlikely. A very small number of remand accused prisoners would be eligible to participate in therapeutic programmes.	Low	Medium We have made this assessment based on data about the remand accused population and our knowledge of scheduling programmes.
Department of Corrections, including staff	There will be some additional costs associated with setting up operational practices to run mixed programmes, while maintaining some separation e.g. at meal times. Additional operational guidance would be required to manage risks associated with mixing. These costs would be met from within baselines as it forms part of BAU activity. There is a potential cost due to the risk of international criticism if we are found to not be complying with the ICCPR. We consider this is low, as the limited circumstances where mixing is implemented will likely be considered to be “exceptional circumstances”.	Low	Medium Operational guidance is frequently updated under business as usual activities. Prisons already have mechanisms in place for separating different prisoners (such as different unlock hours), which can be adjusted to enable mixing.
Programme facilitators/ service providers	In the limited cases where mixing will be permitted, a small number of programme facilitators will need to adjust their service to cater for both remand accused and convicted prisoners and ensure there is some degree of separation to manage risks to the safety and wellbeing of prisoners.	Low	Medium Programmes currently run separately so we know there will be an impact, but only for the small number of

			programmes where mixing is authorised.
Whānau and/or people outside of prison	Whānau and people outside of prison who are connected to prisoners could have concerns about their remand accused family/whānau mixing with convicted prisoners, or vice versa.	Medium	Low We did not receive any feedback about these concerns during public consultation.
Total monetised costs			
Non-monetised costs		*Low*	*Medium*
Additional benefits of the preferred option compared to taking no action			
Remand accused prisoners	More remand accused prisoners will be able to access therapeutic programmes, which should help improve wellbeing. The programmes should also support connections with whānau and whakapapa. The numbers would be small because mixing would mostly be used for remand accused prisoners spending longer times on remand, and most remand accused prisoners are likely to be in prison for a short period of time.	Low	Medium Based on data about the length of time prisoners spend on remand.
Convicted prisoners	Convicted prisoners may benefit from larger community groupings in kaupapa Māori and other therapeutic programmes. The programmes should also support connections with whānau and whakapapa. Numbers of prisoners impacted is likely to be small	Low	Medium Based on the expertise of people designing programmes for these purposes.
Department of Corrections, including staff	Corrections will be able to design programmes focused on prisoners' needs and this may increase over time following trials of mixing at certain sites.	Low	Medium Based on the expertise of people designing programmes for these purposes.
Programme facilitators/ service providers	They will be able to deliver programmes more effectively based on the needs of all prisoners. A very limited number of programmes would be able to mix convicted and remand accused prisoners.	Low	Medium Robust decision-making processes will ensure mixing will only occur when reasonable, in

			very limited circumstances.
Whānau and/or people outside of prison	Whānau would know that prisoners are able to access programmes that are designed around people's needs, and in some cases that remand accused prisoners will be able to access programmes and services they previously could not.	Medium	Low We did not receive any feedback about this during public consultation.
Total monetised benefits	N/A		
Non-monetised benefits		*Low*	*Medium*

Delivering the option

Problem E: A ban on mixing remand accused and convicted prisoners is a barrier to the development of innovative non-offence focused programmes and services

How will the new arrangements be implemented?

Mixing in exceptional circumstances is permitted under New Zealand's international obligations

510. To remain in compliance with the ICCPR obligations, we consider that remand accused and convicted prisoners must have some separation in housing (for the purposes of living quarters, exercise, and eating), and be treated in a manner that distinguishes them from each other. We are considering what this might look like while still supporting therapeutic outcomes. As noted, this could be done, for example, through the use of different access to phone calls, different unlock hours, or through other methods. We recognise, however, that this may impact on therapeutic outcomes in some programmes where it is important that participants are equally involved. Nevertheless, to remain in compliance with international obligations some separation is necessary.

511. Changes to allow the mixing of remand accused and convicted prisoners will be implemented slowly and most likely for our more innovative services and programmes. We will enable this through a phased approach. This will mean that we can refine our approach and ensure that all participants are kept safe.

512. Care must be taken when deciding what programmes will have both remand accused and convicted prisoners participating. Some programmes will not be suitable, such as alcohol and drug programmes where a remand accused prisoner has been accused of alcohol or drug related offending, but is not convicted. This kind of decision making will also better ensure that the right under section 23(4) of NZBORA "to refrain from making any statement and to be informed of that right" are not negatively impacted by remand accused prisoners disclosing details in such programmes. In addition, programme and service providers will receive guidance that enables them to lower the risk that remand accused prisoners disclose details that might impact this right.

513. It is also critical that the remand accused prisoner consents to mixing and is not mixed with convicted prisoners who will not support their wellbeing. As noted by prisoners themselves, the wellbeing and interests of convicted prisoners also need to be

considered, as remand accused prisoners can be unsettled and disruptive, particularly when they are first received into prison.

An initial phase of mixing will begin with the three Māori Pathway's sites

514. Sites such as Hawke's Bay Regional Prison would trial mixing as part of its whānau-centred approach in the Māori Pathways Programme. This will begin once the required legislative changes are in place. The Hawke's Bay approach has already contemplated a design to enable mixing of remand accused and convicted prisoners, which would feature high levels of staffing that, along with the nature of the approach, would mitigate risks that submitters noted in public consultation.

515. As the first phase of the trial will be limited to specific sites at key prisons, guidance for this will be sent out in a separate circular rather than as a change to the Prison Operating Manual in order to avoid confusion among prisons. Prisons will require specific formal approval from national office leadership to use the new provisions. That approval process would include decision-makers receiving advice from technical experts such as psychologists to ensure that any risks are appropriately mitigated through service design.

516. Corrections will use the insights gained from mixing at Māori Pathways sites to understand potential changes to longer-term programme design. Following this, we anticipate having practice guides for staff and our service and programme designers to understand how and when to mix remand accused and convicted prisoners to maximise therapeutic benefit and manage risks such as section 23(4) BORA rights.

517. This process will govern approvals for any Corrections programmes that are appropriate for mixing in the future, to ensure that mixing is properly implemented and monitored.

Minor impact on other groups mixed in prisons

518. As mixing is already specified in the Regulations to enable youth to be mixed with adults and for prisoners in Mothers and Babies Units to be mixed, any changes to the Act could have flow on impacts for these existing provisions. In drafting legislative changes we would work with Parliamentary Counsel to understand any impacts and make sure that these existing provisions were not inadvertently negatively impacted. We anticipate that making a legislative change enabling mixing under limited circumstances will better support the current Regulations, but we will carefully consider this during drafting.

519. In a separate regulatory impact statement and policy process we are also clarifying the youth mixing provisions to ensure it is clearer that mixing of youth with adults is primarily in the best interests of the youth. That was the original policy intent that is not transparently recorded in the current Regulations.

How will the new arrangements be monitored, evaluated, and reviewed?

520. As noted, the trial implementation phases for mixing will influence the final criteria that will govern mixing by Corrections for non-offence focused programmes in the future.

521. Once these implementation criteria have been finalised, and they have been in place for a period of two years, a further review will be conducted to assess the benefits shown from mixing, risks and issues that have occurred, including prisoner and programme and service provider views.

522. We will make any further refinements needed to operational policy and reflect on the effectiveness of regulatory and legislative amendments. We will also evaluate our continued compliance with the ICCPR and international guidance.

Sections F, G, H, I: Miscellaneous amendments

523. We have identified several areas of the Act that require amendments to improve Corrections day-to-day operations. These areas include the wider use of body imaging technology, the use of body temperature scanners upon entry to prisons, the operation of case management planning, and an information sharing mechanism between Corrections and the Inland Revenue (IR).

Section F: Body imaging technology

What is the context behind the policy problem and how is the status quo expected to develop?

The Corrections Act sets out powers related to different types of searches

524. The searching of prisoners, their property and the places where they work, sleep and congregate, is an important management tool for maintaining the security and order of prisons. Searching can reduce unauthorised items such as mobile phones and illegal substances within a prison or unit, serve as a deterrent and play a role in maintaining control within prisons. For example, in 2021/2022 staff at Rimutaka prison identified 681 unauthorised items from searches including 110 communication devices, 106 pieces of tattoo equipment, 107 drug items, and 65 weapons.

525. Section 98(1) of the Act states that Corrections Officers may, at any time, for the purpose of detecting any unauthorised item, conduct a scanner search of a prisoner, a rub-down search of a prisoner, or search any cell in a prison.

526. A rub-down search means a search of a clothed person. A Corrections Officer may run or pat their hands over the body of the person being searched, check inside their pockets, and/or visually inspect their open mouth, hands, feet, or hair.

527. Strip searches may also be conducted in specific situations that are set out under section 98(3) of the Act. These include if an officer has reasonable grounds to believe that a prisoner is in possession of an unauthorised item and may include, for example, immediately before any person visits the prisoner or after a prisoner is brought before the court. In some situations, strip searches are mandatory, such as when a person is first admitted into prison.

Imaging technology searches can be used as a replacement for strip searches

528. The Corrections Amendment Act 2019 introduced a specific power for Corrections to use imaging technology searches (a search that produces an image of the body – whether internal or external) on prisoners. This change was intended to allow the Chief Executive to approve imaging technology searches to replace more invasive searches, such as strip searches, where appropriate.

529. Currently, an imaging technology scanner operates at Rimutaka prison as part of a pilot. Both Christchurch Women's Prison and Auckland Region Women's Corrections Facility have plans to introduce them by late 2022. Arohata Prison has a scanner but does not currently have the infrastructure needed to install and use it. Waikeria Prison also has funding for an imaging technology scanner.

530. Staff and prisoners at Rimutaka Prison have reported that they prefer the use of imaging technology to strip searches, and staff who are trialling the scanner have also reported that the imaging searches are faster to perform than full strip searches.

531. Section 92D(1) of the Act requires that where an imaging technology search is being used as an alternative to a strip search, an image can be produced that may show a clear image of the body beneath clothing, including genitals.

532. However, if an imaging search is not being used as a replacement for a strip search, images of genitals and clear images of the body beneath clothing must be obscured (section 92C). Current imaging technology is not capable of obscuring genitals. Therefore, in practice Corrections is only able to use imaging technology searches where they are a replacement for a strip search.

533. Prisoners need to consent to a body imaging scan over a strip search.

Images taken by imaging technology are currently deleted after 24 hours

534. Section 92C(2) of the Act sets out that an image must be retained only for as long as it is necessary to determine the presence of an unauthorised item. The current system for the scanner operating at Rimutaka Prison is designed to retain imaging technology data for a maximum of 24 hours after it has been taken. This operational decision provides enough time to enable staff to review images to identify any unauthorised items that may have come in that day, should items be found on a prisoner that same day.

535. The imaging technology scanners expose prisoners to low levels of radiation. One scan will expose someone to the equivalent of a one-hour plane flight. Prisoners cannot have more than three scans per day, or a total of 133 per year. There are three different levels of scanning that give different levels of image resolution, clearer image resolution exposes people to higher levels of radiation.[59]

Dignity and respect should be prioritised under the Bangkok Rules for women prisoners

536. The corrections system in New Zealand is guided by United Nations conventions, and in this case Rule 19 of the Bangkok Rules states that personal searches should be undertaken to “ensure women prisoners’ dignity and respect are protected” and that searches should only take place by properly trained women staff. Rule 20 states that “alternative screening methods, such as scans, shall be developed to replace strip searches and invasive body searches, in order to avoid the harmful psychological and possible physical impact of invasive body searches”.

The Act requires that searches are currently conducted by an officer who is the same sex as the person being searched

537. Section 94(1) of the Act provides that rub down searches, strip searches and imaging technology searches may only be carried out by a person of the same sex as the person to be searched.

538. Similarly, section 92D(2)(a) provides that an image that is produced using imaging technology may only be viewed by an officer or a constable of the same sex as the person who is searched.

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[59] At 133 scans a year the cumulative dose would be 0.2 mSv at the default Level 2 setting and 0.3 mSv at the default Level 3 setting. The total cumulative dose setting will ensure exposure stays below the 0.3mSv/year exposure standard. At this level the risk of increased cancers is generally considered to be extremely low.

539. In practice, receiving offices at prisons where prisoners enter the prison have operational guidance requiring them to roster male and female staff on to enable transgender prisoners arriving to express a preference for who should perform these kinds of searches, a male or female Corrections Officer. The staff member may not necessarily be of the 'same sex' as the prisoner, but the prisoner's preference is respected.

What is the policy problem or opportunity?

Problem F1: restrictions on imaging technology searches are preventing their wider use to replace more invasive searches

540. We seek to enable the wider use of imaging technology searches as a replacement for more invasive searches. This would improve wellbeing for prisoners as imaging technology searches are less invasive than strip searches and rub-down searches, given they do not require the person to be touched on their genital area or to remove any clothing.

541. We also seek to enable the wider use of imaging technology searches to help make prison environments safer for prisoners and staff. The presence of unauthorised items, including for example drugs and weapons, increase the risk of violence between prisoners and against Corrections staff. This reduces the opportunity for prisoners engagement with rehabilitation programmes as they are on heightened alert due to violence and an unsafe environment. Meaningful engagement with rehabilitation programmes assists in making prisons and the community safer, as people are addressing their offending related needs.

542. Staff at sites where imaging technology has been deployed report that it is harder to get unauthorised items into prison when body imagining technology is used, compared to strip and rub-down searches. Staff also report that physical searches can lead to prisoners becoming upset and confrontational, reducing staff safety.

543. Hand-held scanners (wands) and walk-through scanners (Archway Metal Detectors) are also available search methods. However, these methods are designed to detect metal only and are not effective for the detection of drugs, internally concealed items or other concealed items that do not contain metal.

What objectives are sought in relation to the policy problem?

544. Our objective is to ensure the wellbeing dignity and safety of prisoners. An improved prison environment for prisoners will contribute to improved rehabilitation and reintegration outcomes.

545. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights	The extent to which wider use of imaging technology searches impacts on human rights, namely s 21 of the NZBORA (unreasonable search and seizure), the Bangkok Rules and the Mandela Rules.
Transparency and accountability	The extent to which the option supports the transparency of how Corrections uses

	imaging technology and under what circumstances.
Practical to implement and responsive	The practicality of implementing the option within the prison environment and how easily the option will allow for innovation including changes in technology and the introduction of different scanning technology.
Contributes to better outcomes for Māori	The extent to which the option will improve outcomes for Māori in the corrections system through ensuring that personal rangatiratanga is respected.
Supports oranga/wellbeing of the people we manage	The option considers the oranga/wellbeing of people who need to be searched. through respecting personal dignity, bodily privacy, and bodily autonomy.
Contributes to safety	The extent to which the option will contribute to a safer prison environment through fewer unauthorised items being present and prisoners feeling more settled after less invasive searches.

Deciding upon an option to address the policy problem

Problem F1: restrictions on imaging technology searches are preventing their wider use to replace more invasive searches

What scope will options be considered within?

546. An option set out in the public consultation discussion document has now been ruled out of scope. That option was to "implement imaging technology operationally that can obscure clear images of the body beneath clothing while blurring genitals". During consultation we heard that there was some support for this option; however, Corrections now understands that there is no technology available that would be able to selectively obscure parts of the body, such as genitals.

547. The options being considered are also limited to searches of prisoners and we have not considered options for changes to searches of other people, such as visitors or staff. Corrections does not strip search visitors or staff and although they can have rub down searches, this must be done with their consent and they have the choice to leave the prison if they do not consent. Therefore, it is not appropriate to consider expanding the use of body imaging technology without genital blurring for visitors and staff, as this would constitute a significant increase in the invasiveness of our search powers.

What options are being considered?

Option One – status quo

548. Under the status quo, current restrictions on the use of imaging technology searches would remain, meaning they are only able to be used as a replacement to a strip search.

Option Two – remove restrictions that require genitals to be blurred enabling imaging scanners to be used for all search situations, where consent is given

549. This option would amend the Act to allow Corrections to conduct imaging technology searches on prisoners that show their genitals in all situations where there is reason to undertake a search, not just in place of strip searches. People in prison would need to consent to the use of a body imaging scanner in place of an alternative search method. If a prisoner did not consent to the use of a body imaging scan, then the alternative search method would be used, such as a run down or wand search.

550. Practically, this will mean imaging technology searches will function similarly to other types of scanner searches because a Corrections Officer may, at any time, for the purposes of detecting an unauthorised item, conduct this type of search. For example, it could be used in place of a rub-down or strip search, as well as a metal detector, hand held wand, or a search using a detector dog.

551. This option would significantly expand Corrections ability to carry out searches using imaging technology.

Option Three – clarify that the restrictions requiring genitals to be blurred do not apply in any situation where imaging technology is used as an alternative to a rub-down search of a prisoner, when that rub-down search is done upon entry or re-entry to the prison and where consent is given

552. Option Three would amend the Act to clarify that imaging technology that shows a prisoner's genitals can be used as an alternative to a rub down search, when that rub-down search is upon the prisoner's entry or re-entry to the prison. Under this situation, the requirement to obscure images of the body beneath clothing and blur genitals would not apply. Prisoners would need to provide consent for an imaging technology scan to be used in place of a rub-down search in the situations outlined. If a prisoner did not provide consent, a rub-down search would be conducted as the alternative.

553. Imaging technology would continue to be able to be used in place of strip searches.

554. Requirements to avoid producing a clear image of the body beneath clothing, and to blur genitals, would continue to apply in all other situations such as for visitors and staff.

555. Option Three was developed post consultation. During public consultation we heard from the Privacy Commissioner that Option Two was concerning as it is broad and unrestricted in nature and did not define where imaging technology searches may be used. Option Three will change the legislation to more clearly define the situations where imaging technology can be used as an alternative: rub-down searches upon entry and re-entry to prison and strip searches.

How do the options compare to the status quo/counterfactual?

Problem F1: restrictions on imaging technology searches are preventing their wider use to replace more invasive searches

	Option One – status quo	Option Two – remove restrictions that require genitals to be blurred enabling imaging scanners to be used for all search situations, where consent is given	Option Three – clarify that the restrictions requiring genitals to be blurred do not apply in any situation where imaging technology is used as an alternative to a rub-down search of a prisoner, when that rub-down search is done upon entry or re-entry to the prison and where consent is given
Complies with human rights obligations	0	0 The wider use of body imaging technology at any time, for the purposes of detecting unauthorised items, does not align with s 21 of NZBORA not to be subject to unreasonable search and seizure or s 9 not to be subjected to torture or cruel treatment because in many situations there will be options to use other, less invasive search methods, such as a handheld scanner search that does not produce images of the body. The wider use of imaging technology will enable prisoners to avoid more invasive searches in more circumstances if they choose. This is because they could opt for an imaging technology search in place of all types of searchers. This gives prisoners more option and could lead to prisoners feeling that they have more choice and that there is less encroachment on their human rights, such as the rights to not to be subject to unreasonable search and seizure.	+ This option complies with human rights obligations, including s 21 and s 9 of NZBORA by ensuring that in all situations the least invasive and most proportionate search method is used, as people will have a choice between an imagining technology scan or a physical search. This option best aligns with the Bangkok Rules, particularly rules 19 and 20, which relate to invasive searches of women prisoners. It also aligns with rule 52 of the Mandela Rules which states that intrusive searches, including strip searches, should be undertaken only if absolutely necessary and prison administrations shall be encouraged to develop and use appropriate alternatives to intrusive searches.
Transparency and accountability	0	0 This option provides transparency as imaging technology searches may be conducted by an officer at any time for the purpose of detecting any unauthorised item.	0 The Act is clear that body imaging technology can be used as a replacement for a strip search or a rub-down search upon entry or re-entry to a prison, but not in any other situations.
Practical to implement and responsive	0	+ Guidance and processes will need to be developed to support use, as this option greatly widens the situations in which imaging technology can be used. Once implemented, this change should be operationally efficient, as it will allow the full integration of imaging technology into custodial processes. This will also mean it is responsive in this environment.	+ Guidance and processes will need to be developed to support the increased use of imaging technology. Once implemented, this option will simplify custodial decision-making by clarifying that imaging technology can be used as a replacement for any strip search, or rub-down search when that rub down search is performed on prisoner entry or re-entry into prison. This option will be responsive to changes in the future as imaging technology scanners are introduced to more prisons.
Contributes to better outcomes for Māori	0	- Prisoners will be given the option to choose whether a physical search or imaging technology search is used, which can be seen to respect personal rangatiratanga.	+ Same as in Option Two but the greater limitations on the use of imaging technology scans will protect against them being used in excess, protecting bodily privacy.
Supports oranga/wellbeing of people in our management	0	++ Allows for all searches to be replaced by imaging technology that does not blur images, avoiding the use of the most invasive search methods available to Corrections, and improving the wellbeing of prisoners. Prisoners have more choice under this option to choose an imaging scan over all physical search methods.	+ Allows for all strip searches and some rub-down searches to be replaced by imaging technology that does not blur images, avoiding the use of the most invasive search methods available to Corrections, and improving the wellbeing of prisoners.
Contributes to safety	0	+ The wider use of imaging technology searches will support our purpose of administering sentences safely. Improved detection of unauthorised items, will create a safer environment for prisoners and staff.	+ The wider use of imaging technology will support our purpose of administering sentences safely, through the greater detection of unauthorised items in turn creating safer environments for prisoners and staff.
Overall assessment	0	0 Although this option would enable imaging technology to replace more invasive searches, it would give broad powers that could lead to negative impacts on human rights obligations and the wellbeing of prisoners.	+ This option is transparent and practical to implement and will enable imaging searches to replace the most invasive types of searches in prisons, which will positively impact the wellbeing of prisoners. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem F1: restrictions on imaging technology searches are preventing their wider use to replace more invasive searches

556. Option Three is Corrections' preferred option. On the balance of our objectives, this option achieves increased wellbeing for prisoners by allowing imaging technology searches to be used in place of strip searches (which is currently provided for in the legislation at section 98(9)) and in place of rub down searches in specific situations.

557. Option Three also increases Corrections' ability to detect unauthorised items and therefore ensure the safety and security of prisons. It is a proportionate response because unauthorized items are most likely to be detected when prisoners enter or re-enter prisons.

558. Option Three complies with Corrections' human rights obligations, including the Bangkok Rules, which focus on ensuring dignity and privacy for women prisoners and advocate for imaging searches over more invasive options such as strip searching.

559. Option Three also provides prisoners more choice over the situations where they can opt for imaging technology to be used in place of physical search methods. Prisoners can choose to have a physical search if preferred.

560. Option Two would likely lead to better detection of unauthorised items as imaging searches are found to be better at identifying internally concealed items and any items that are not metal, and therefore will have the greatest impact on improving the safety and security of prisons. However, this option would lead to the greatest infringement on rights under NZBORA as it would make imaging technology searches (which produce images of bodies and genitals) available where a scanner search, such as a scanner wand or archway metal detector, would be reasonable, proportionate, and afford prisoners appropriate privacy. It does not align with the administration of sentences in a manner no more restrictive than necessary.

561. Option Two provides prisoners with the most choice over when they could opt to have a body imagining scan, under this option they could choose to have one in place of all types of search methods including less invasive searches such as a metal detector search. While the significance of allowing prisoners to choose how they are searched is recognised, on balance, we consider that Option Three best protects human rights because in some situations a less intrusive search, such as metal detector search, would be sufficient over a full body imaging technology search.

562. As the recommended option, Option Three avoids operational ambiguity by providing clearly defined situations in which imaging technology searches can be performed. This will provide clarity for operational staff.

What is the policy problem or opportunity?

Problem F2: there is a lack of clarity around how long it is necessary to retain an image to determine the presence of an unauthorised item

563. Images taken by body imaging technology scanners are sensitive personal information. Section 92C(2) of the Act requires that these images may only be retained for as long as necessary to determine the presence of an unauthorised item. The Act is not clear what length of time is considered necessary. At present, the scanner that we have tested at Rimutaka Prison deletes images no later than 24 hours after they are taken and that timeframe was decided by operational staff.

564. Operationally, the 24 hour period has provided staff sufficient time to look back at the image if they think they may have missed the detection of an unauthorised item. For example, prison staff explained that in some instances they have seen someone with an unauthorised item on the same day they entered prison. Staff have then been able to go back and look at the image to determine if they missed something when initially assessing the image, to see if that person brought the item into the prison. If staff can determine where unauthorised items have come from, appropriate disciplinary action can be taken and this could lead to a safer prison environment.

565. We consider it important to clarify how long it is necessary to retain an image to determine the presence of an unauthorised item. This is in keeping with the Privacy Act 2020 Principle 9 that requires that an organisation should not keep personal information for longer than it is required for the purpose it may lawfully be used.

566. This problem was not part of the public consultation. It was identified when checking the details of consultation feedback with operational staff. Submissions from the Privacy Commissioner also emphasised the importance of protecting prisoner privacy throughout the imaging process, including restricting access.

What objectives are sought in relation to the policy problem?

567. Our objective is to ensure transparency around how long images from technology searches should be kept for, to ensure sensitive personal information is not retained for any longer than necessary. The second objective is to ensure Corrections has adequate time to identify unauthorised items. Having adequate time to identify any unauthorised items will contribute to the safety and security of prisoners and staff. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights	The extent to which the option impacts on human rights, namely NZBORA and Principle 9 of the Privacy Act.
Transparency and accountability	The extent to which the option provides transparency about how long images are held for.
Practical to implement and responsive	The practicality of implementing the option for staff, such as Corrections Officers who carry out body imaging searches. How responsive the option is to change over time.
Contributes to better outcomes for Māori	The extent to which the option will tangibly improve outcomes for Māori in the corrections system, through protecting their personal images which may be considered taonga.
Supports oranga/wellbeing of the people we manage	Prisoners can feel comfortable that the image of their body is deleted and not viewed by more staff than are needed.

Contributes to safety	The extent to which the option will contribute to the safety of the prison environment by detecting unauthorised items and ensuring accountability for any unauthorised items.

Deciding upon an option to address the policy problem

Problem F2: there is a lack of clarity around how long it is necessary to retain an image to determine the presence of an unauthorised item

What scope will options be considered within?

568. An option was considered that would require the Corrections Officer who completed a search to delete the image as soon as possible. This option was ruled out of scope as it would create the potential for human error. Instead, we considered Option Three which allows for an image to be deleted as soon as possible, and automatic deletion after 24 hours to prevent against the risk of human error.

What options are being considered?

Option One – status quo

569. Under the status quo the Act would continue to require images to be retained only for as long as necessary to determine the presence of unauthorised items.

Option Two – amend the Act to specify that images must be deleted within 24 hours

570. Under this option, the Act would specify that an image can only be retained for a set period of time, and we suggest that is up to 24 hours, after which time it must be deleted. Imaging technology scanners would be set to automatically delete all images at a set time of night that would be no later than 24 hours after the image was taken.

571. This option allows staff to check images later that day if an unauthorised item is later found on a prisoner who had received an imaging technology search, to determine if anything had been missed when the image was initially reviewed. Being able to review images means that staff will not need to carry out an additional body image search or strip search if unauthorised items are found in a prisoner who has already received an imaging technology search that day.

Option Three – amend the Act to specify that an image must be deleted as soon as the search has been completed, with the machine set to automatically delete all images within 24 hours

572. Under this option the Act would specify that an image must be deleted as soon as the search has been completed and the prisoner has been released to enter or re-enter the prison. The operator would be prompted by process or the scanner itself to decide if the search was complete and chose when to delete the image.

573. Operationally, this would change Corrections' current practice of retaining imaging technology data until it is automatically deleted at the end of the day.

574. The scanners would also be set to automatically delete all images at a set time of night no later than 24 hours after the image was taken, to protect against the risk of human error if a staff member failed to manually delete an image.

How do the options compare to the status quo/counterfactual?

Problem F2: there is a lack of clarity around how long it is necessary to retain an image to determine the presence of an unauthorised item

	Option One – status quo	Option Two – amend the Act to specify that images must be deleted within 24 hours	Option Three – amend the Act to specify that an image must be deleted as soon as the search has been completed, with the machine set to automatically delete all images within 24 hours
Complies with human rights obligations	0	+ This option would ensure that images are retained for no longer than 24 hours, but this might mean that some images are kept for longer than required, which does not fully align with Principle 9 of the Privacy Act. The capture of each image impacts on privacy, but prisoners have reported preferring it to a strip or rub down search.	++ This option could best comply with Principle 9 of the Privacy Act in that it would not keep personal information for longer than it is required for the purpose it may lawfully be used.
Transparency and accountability	0	++ Increases transparency by clarifying in legislation that images need to be deleted within 24 hours.	++ Under this option images need to be deleted as soon as a search has been completed. To account for human error (if an Officer forgets to delete the image) the machine will be programmed to ensure images are deleted within 24 hours. Increases transparency
Practical to implement and responsive	0	+ This option would be practical to implement as it aligns with current operational practice for imaging technology data to be automatically deleted after no more than 24 hours. This would give Corrections Officers greater clarity on where unauthorised items have come from if they are later detected on prisoners. In the longer term, this option may not be responsive to change because there may be an operational reason that means holding an image for longer is necessary in the future, but as the search impacts on privacy any future change will be legislative and therefore the impacts thoroughly considered.	+ This option is similar to Option Two but would require changes to operational processes, because staff would need to be trained to delete an image as soon as the search has been completed. Guidance for staff about requirements to delete images would also need to be updated.
Contributes to better outcomes for Māori	0	+ Iwi partners that we consulted valued the respect to privacy that scans offer over strip searches. Personal images might also be considered taonga and greater assurance around their personal handling will benefit Māori.	+ Same as for Option Two.
Supports oranga/wellbeing of people in our management	0	0 Prisoners can be confident that their personal image will be deleted.	0 Same as for Option Two.
Contributes to safety	0	++ Retaining an image for up to 24 hours will enable officers to view them again if needed, which will better support the safety and security of prisons for prisoners and staff by better enabling staff to detect how unauthorised items are introduced to prisons.	+ Under this option if a search has been deemed to be complete an Officer will delete the image. However, if an unauthorised item is detected on the prisoner later that day, officers will not be able to determine if the item was missed in the initial scan as the image will no longer be available to view. This does not contribute to the safety and security of prison environments as officers will not know who is responsible for the unauthorised items emergence.
Overall assessment	0	+ This option is preferred as it will enable officers to check images within 24 hours if unauthorised items are later found, better supporting the safety and security of prisons. This has a greater impact on prisoner privacy as an image may be kept longer than necessary, but it is a good balance of the need to keep prisons safe from contraband and protecting prisoner privacy. (Recommended Option)	+ This option would better comply with the Privacy Act but would not contribute to safety as much as Option Two, as staff would not be able to check images if unauthorised items are found later that day on prisoners.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem F2: there is a lack of clarity around how long it is necessary to retain an image to determine the presence of an unauthorised item

575. Option Two is Corrections' preferred option. Option Two and Three score similarly against the criteria. However, Option Two is practical to implement as it will allow staff time to make a determination and will enable them to review data if they need to on the day that a prisoner is scanned. Option Two would clearly outline in the Act that an image must be deleted within 24 hours. Although less aligned with the Privacy Act than Option Three, Option Two would align with principle 9 of the Privacy Act, as personal information would not be kept for longer than it is required for the purpose it may lawfully be used.

576. Option Two is practical to implement as the machine can easily be set to delete all images once a day.

577. This option also supports the oranga of people in our care. People will feel more confident that any data obtained will be automatically deleted within 24 hours. This automated process reduces the opportunity for human error and allows confidence in the deletion process.

Problem F3: What is the policy problem or opportunity?

Problem F3: Requirements on how searches are conducted do not support gender or sex diverse persons

578. The current legislative requirements specifying that searches can only be carried out by a 'person of the same sex' does not support gender affirming practices for prisoners who may be gender diverse or have diverse sex characteristics.[60] The framing of the current legislation does not provide for people who are transgender, non-binary, or intersex. Operational practice enables transgender prisoners to choose a preferred sex or gender of staff member to conduct the search, and that staff member may not strictly be the same sex as the prisoner.

579. This problem was not part of public consultation but was identified while reviewing the problem in F1 with operational staff and the submissions we received from groups such as Intersex Aotearoa. They stressed the importance of respecting gender and sexual preferences and the need to provide for people who have privacy concerns about their bodies. In working with operational staff to review problem F1 we identified the need to ensure the current operational policy to respect transgender prisoners is well supported by the legislation (see Appendix Five for a copy of some of the relevant policies).

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[60] Gender identity refers to an individual's sense of being a woman, a man, neither of these, both, or somewhere along a spectrum, while gender expression is a person's presentation of their gender. Gender is not fixed and may change over a person's lifetime and may or may not align with their sex assigned at birth. This paper uses the terms recommended in Te Kawa Mataaho – Public Service Commission's 'Rainbow inclusive language guide', 11 March 2022. Diverse sex characteristics is an umbrella term used to describe people born with physical or biological sex characteristics (including sexual anatomy, reproductive organs, hormonal patterns and/or chromosomal patterns) that are more diverse than stereotypical definitions for male or female bodies. Like all people, intersex people may identify as male, female or non-binary and can have any sexual orientation (see Regulatory Impact Statement for Human Rights Act Amendment Bill 2023, October 2022).

The current restrictions do not align with proposed wider government changes to develop more inclusive policies for Rainbow people

580. The Births, Deaths, Marriages, and Relationships Registration Act 1995, for example, will introduce newly established self-identification processes and is due to be fully operative by mid-2023. The changes are intended to ensure people have their gender recognised on birth certificates if their gender is different to the sex they were assigned at birth. This is to ensure people can more easily access gender affirming official documentation.

581. Internationally, the Yogyakarta Principles on the application of human rights in relation to sexual orientation and gender identity emphasise the need for privacy (principle 6), and for the right to be treated with respect and dignity while in detention including avoiding "marginalising persons on the basis of sexual orientation or gender identity" (principle 9).

What objectives are sought in relation to the policy problem?

582. The object is to ensure that requirements for searches support gender and sex diverse prisoners and align with wider government policy changes for Rainbow communities.

583. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/consideration
Complies with human rights	The extent to which the option impacts on human rights, namely the Human Rights Act and NZBORA.
Transparency and accountability	The extent to which the option provides transparency for how Corrections supports people who are gender diverse including transgender and intersex, when conducting searches.
Practical to implement and responsive	The practicality of implementing the option for all people involved, including for prison staff and for people who are gender diverse. The extent to which the option will be able to respond to changes over time in government policy for Rainbow communities.
Contributes to better outcomes for Māori	The extent to which the option will tangibly improve outcomes for takatāpui Māori in the corrections system.
Supports oranga/wellbeing of the people we manage	Specifically, how the option will impact the wellbeing of people who identify as being gender diverse, intersex or transgender in the prison environment.
Contributes to safety	The extent to which the option will contribute to safer prison environments for gender diverse people and for prison staff.

Deciding upon an option to address the policy problem

Problem F3: Requirements on how searches are conducted do not support gender or sex diverse persons

What options are being considered?

Option One – status quo

584. Under the status quo the Act will maintain that a rub-down search, strip search and an imaging technology search may only be carried out by a person of the same sex as the person being searched. It will also maintain that an image may only be viewed by an officer or constable of the same sex.

585. Operational practice currently enables prisoners to choose the preferred sex of the Corrections Officer who will search them.

Option Two – amend the Act to enable prisoners to nominate a male or female staff member to conduct their personal searches and view images of any searches

586. This option will be to amend the Act to enable gender diverse prisoners to nominate a male or a female staff member to search them. Corrections would be required to ensure that the request is met, and this aligns with operational practice under the status quo but will ensure consistency across prison sites as new scanners are introduced more widely.

587. 'Gender diverse' in this situation might refer to prisoners, for example, who might identify as transgender, intersex, or non-binary.

Option Three – transgender, intersex or gender diverse prisoners in Corrections' facilities *may request* a preference of a male or female officer or constable who performs a search on them or views an image of a search on them

588. Under this option, the Act would be amended to allow gender diverse prisoners to request a male or female officer to carry out a search, but officers would be provided with some flexibility about whether they are able to meet the prisoner's request. Corrections could choose to decline the request.

589. As in Option Two, gender diverse may include, for example, transgender, intersex, or non-binary prisoners.

590. This option is similar to operational practices in NSW that state "transgender and intersex inmates must be asked their preference regarding the gender of the officer conducting strip and pat search procedures, except in cases of emergency, the strip and pat searching of a transgender or intersex inmate is to be conducted by an officer of the preferred gender".

How do the options compare to the status quo/counterfactual?

Problem F3: Requirements on how searches are conducted do not support gender or sex diverse persons

	Option One – status quo	Option Two – amend the Act to require searches or images of searches to be conducted by or viewed by a male or female staff member, as nominated by the person who is recorded as gender diverse	Option Three – transgender, intersex or gender diverse prisoners in Corrections facilities may request a preference of a male or female officer or constable who performs a search on them or views an image of a search on them
Complies with human rights obligations	0	++ This option will better comply with NZBORA s 21 and s 9 regarding unreasonable search and seizure, and torture or cruel treatment. Under this option, Corrections will be required to ensure that the preference for a male or female staff member is given effect to.	+ Same as in Option Two, however this option is not as supportive of the rights of gender diverse prisoners, as Corrections can choose not to comply with the preference indicated.
Transparency and accountability	0	+ The Act will be clearer about the process for searching gender diverse prisoners and require Corrections to ensure this occurs, which provides greater accountability than the status quo.	+ There will be greater transparency in the Act about the process for searching gender diverse prisoners.
Practical to implement and responsive	0	+ This option aligns closely with current operational practice and therefore would be straightforward to implement. It will simplify custodial decision-making by clarifying that where people are recorded as being gender diverse including, non-binary, transgender or intersex, officers of the nominated sex or gender to what is recorded in the persons alert tab in IOMS, can conduct the search. Staff would need to ensure that IOMS is kept up to date, which could be difficult when staff are in time pressured situations. This option would be responsive to changes over time as people can nominate their preference, which may change over time.	+ Same as Option Two but provides Corrections with more flexibility about whether to comply with the request. Will need to have clear reasons for why an officer can decide that they cannot meet the preference stated. This option is responsive to change over time as it allows the prisoner to specify their preference for who performs a search, which may change over time.
Contributes to better outcomes for Māori	0	++ Better recognises that takatāpui may not identity with the sex they were assigned at birth, or the sex in official documentation, and allows Corrections to respond to this and better support their wellbeing.	+ Same as for Option Two, but the person's preference may not always be given effect to.
Supports oranga/wellbeing of people in our management	0	++ Better supports the oranga of people who identity as gender diverse including non-binary, transgender, and intersex. Recognises and supports that gender identity is just as important as sex characteristics and allows Corrections to respond to this. Better respects a prisoner's preference.	+ Same as Option Two. Under this option officers may not be able to meet the request of the prisoner which could lead to feelings of decreased oranga if they feel they were not listened to.
Contributes to safety	0	++ Ensures that prisoners feel safe in the way they are treated. Staff will also be safer as there is less potential for conflict to arise from people feeling upset about the sex of the officer who conducts a search on them.	+ Same as Option Two but with prisoners and staff potentially feeling less safe if Corrections is unable to comply with the preference requested.
Overall assessment		++ This preferred option best supports the oranga/wellbeing of prisoners and is practical to implement. (Recommended option)	+ This option does not accord with current practice but could give Corrections more flexibility. Does not provide the same support for wellbeing that Option Two achieves.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem F3: Requirements on how searches are conducted do not support gender or sex diverse persons

591. Option Two best supports gender and sex diverse people who are in the management of Corrections. This option gives them input into decision making that affects them and allows them to state their preference for a male or female officer who conducts a search on them. Corrections must comply with this request (whereas under Option Three, Corrections could decline the request). It recognises that their gender may be different to what was assigned at birth, and it better aligns with the wider government changes to develop more inclusive policies for Rainbow people.

592. Option Two best aligns with the policy objectives. It supports the oranga of people in Corrections management and aligns with human rights obligations such as under the Bangkok Rules for women.

593. It is also operationally practical as Corrections already has a policy of ensuring that male and female staff are onsite at prisons. We did not propose that prisoners nominate a preferred sex or gender, or same sex, as we do not have enough staff who are gender diverse to meet all such requests.

What are the marginal costs and benefits of the options?

Problem statements F1, F2 and F3

Affected groups	Comment.	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	No material impact.	N/A	N/A
Department of Corrections, including staff	There will be costs to introduce new scanners alongside necessary infrastructure changes to 14 prison sites that currently do not have this technology. Purchase costs are expected to cost $4.9 million over time. However, the use of body imaging technology will not be mandatory so these costs can be phased over time as funding is available. There are also costs associated with staff training and communicating the changes, including travel costs for staff to visit prison sites and deliver training. Most training costs will be covered within baseline funding as this is part of BAU activity. Travel costs to deliver training is expected to cost up to $20,000.	Medium	Medium As we have piloted the scanner at Rimutaka and know the purchase costs for new scanners. However, the costs of other infrastructure changes that may be needed at sites in order to install the scanners is unknown.
Total monetised costs		*Medium*	*Medium*
Non-monetised costs		*Approximately $4.9 million*	*Medium*

Additional benefits of the preferred option compared to taking no action			
Prisoners	This is likely to benefit the wellbeing of more prisoners as imaging technology searches are less invasive than strip searches or rub down searches. Transgender and gender diverse prisoners would also benefit from having certainty that they are able to nominate a male or female Corrections Officer to perform a search. There will likely be better engagement from prisoners in rehabilitative programmes as there will be fewer unauthorised items entering prison, For example, fewer drugs inside prison will mean that prisoners can focus on substance rehabilitation without the potential distraction of drugs in the unit.	High	High We have not engaged with prisoners on this subject. However, staff at Rimutaka Prison have reported that prisoners prefer imaging technology searches.
Department of Corrections, including staff	Staff at Rimutaka have reported that they prefer scanner searches. The scanner search saves processing time compared to other types of searches, and leads to less tension between staff and prisoners.	Medium	High As above.
Total monetised benefits			
Non-monetised benefits		*Medium-high*	*High*

Delivering the option

Problem statements F1, F2 and F3

How will the new arrangements be implemented?

594. Implementation will involve updating operational guidance for staff who work in the custodial space. The guidance will outline the situations in which imaging technology can be used as an alternative to rub down searches.

595. Current imaging technology scanners will continue to delete image data automatically within 24 hours.

596. Corrections can choose how and when to invest in more machines over the coming years to ensure this new technology can be implemented across prison sites (e.g., 14 sites do not have a scanner or immediate plans to purchase one). As a result of this change, more officers will use imagining technology when conducting searches, therefore adequate training for staff would be required to support this change. Training sessions will be provided, and refresher materials made available.

597. The number of searches that a site does varies each day between prisons with the larger prisons undertaking dozens of searches per day of prisoners entering prison while smaller women's prisons will conduct approximately 10 searches or less per week.

598. Where there are imaging technology scanners the communications team at Corrections will need to create posters that clearly communicate to prisoners the possible impacts associated with their use. These posters would state that there is minimal exposure of radiation when taking a scan: a scan is the equivalent of a one-hour plane flight. The poster will also clearly set out that a strip search or rub down search may be conducted

instead if preferred by the prisoner. Such posters have been used for the trial at Rimutaka Prison and would be updated after the changes come into effect.

How will the new arrangements be monitored, evaluated, and reviewed?

599. We propose that three months after each prison starts using all the new provisions, the Custodial Practice team would undertake a practice review. That would be three months after sites receive guidance and communications that enable them to start using the new processes.

600. The practice review would likely pick several sites to visit and speak with staff to understand how they are using the changes. We would want to be assured that operationally the changes are working as intended and that they are improving the experience of both staff and prisoners, are being used instead of the more invasive searches, and all legal requirements for privacy and security are being met including images being deleted as required.

Section G: Body temperature scanners in prisons

What is the context behind the policy problem and how is the status quo expected to develop?

601. During the COVID-19 pandemic, Corrections employed body temperature scanners in every prison to detect high body temperatures among prisoners, staff members and visitors, as this may indicate a risk of carrying COVID-19.[61]

602. These body temperature scanners use infrared thermal imaging technology and visible light technology to fulfil a non-contact, large scene real-time temperature measurement and screening function. The scanner takes an image that is kept in the machine for no more than one hour.

603. During COVID-19 none of this data was retained as it constitutes a personal health record. This means that no data was kept about how many people were recorded each day at each prison with a raised temperature, or how many people were denied entry to prisons as a result of showing a high temperature. However, our records show that staff and visitors who had a raised temperature were asked to return home, test, and/or see a general practitioner.

604. The scanners that Corrections uses were purchased from a company that provides scanners internationally to airports, hospitals, bus stations and schools. The scanners were selected because they provide highly accurate results in a contactless manner.

605. The use of body temperature scanners must align with the provisions of the Act not to manage people more restrictively than necessary and with section 21 of NZBORA, which provides for the right to be secure against unreasonable search and seizure. Therefore, body temperature scanners must only be used where reasonably necessary.

What is the policy problem or opportunity?

Problem G: The current legislative authority for the use of body temperature scanners is unclear

606. The Act does not contain a specific authorisation for the use of body temperature scanners upon entry to prisons to detect illnesses such as influenza and COVID-19. While we considered that the COVID-19 pandemic justified Corrections making an operational decision to use the scanners as an emergency measure, we do not have clear legislative authority to use them as an ongoing tool to prevent the spread of disease that has a high temperature in prisons.

607. Body temperature scanners constitute a search, and we consider that legislative authority must be given for the future use of these scanners outside of emergency circumstances. As noted by the New Zealand Nurses Organisation during public consultation, a temperature check is a health intervention, and any information taken from the check is also private health information and would need to be noted in accordance with the Health Information Privacy Code 2020.

608. Although we have no data on how many people were found to have a raised temperature at each prison during the COVID-19 pandemic, we do know that the

[61] Requirements for the use of body temperature scanners have now been removed from Corrections' guidance, as many COVID-19 measures have been eased as case numbers nationally and in prisons have dropped.

scanners successfully identified people with raised temperatures. The scanners are effective for diseases such as influenza where a raised temperature is a symptom. This means there is an opportunity to future proof our pandemic planning provisions in legislation to allow an immediate response.

609. Prisoners are some of the most vulnerable to diseases such as COVID-19 due to the ease of transmission in a prison setting, and their existing health vulnerabilities. This means a swift response is best to minimise risks and in 2020 Corrections recognised this and purchased and introduced temperature scanners during the first COVID-19 lockdown.

Submitters offered mixed opinions on the use of temperature scanners.

610. There were several responses agreeing that our current legislative inability to use temperature scanners needed to be addressed. Specifically, 14 responses noted that the use of temperature scanners would be a simple, non-invasive way to keep prisoners, staff members, and visitors safe. A further 17 responses also noted that COVID-19 and other diseases such as the flu will always be present, so it would be useful to have these powers to assist with preventing them from circulating in prisons. For example, the New Zealand Law Society noted that prisons are crowded environments with vulnerable people, so it would be useful to clarify in legislation when scanners are able to be used.

611. On the other hand, there were some responses that questioned whether temperature scanners are necessary now that the threat of the COVID-19 pandemic has somewhat passed, as well as some responses that believed their use would be both a human rights and privacy violation.

What objectives are sought in relation to the policy problem?

612. Our objective is to support the health and wellbeing of prisoners, while ensuring search powers are only used where reasonably necessary.

613. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/Consideration
Complies with human rights obligations	Aligns with principles of NZBORA, particularly the right to be secure against unreasonable search and seizure.
Transparency and accountability	Provides clear powers and boundaries for the use of body temperature scanners.
Practical to implement and responsive	Practical for Corrections to implement and responsive to changes in best health and scanning practice over time.
Contributes to better outcomes for Māori	Ensures that Māori, who are overrepresented in our prisons, are sufficiently protected and not subject to any more restrictions than are necessary.
Supports oranga/wellbeing of the people we manage	Ensures that the physical wellbeing of prisoners is protected.
Contributes to safety	Supports Corrections to support the safety of prisoners, visitors and staff by

	being able to prevent the spread of disease.

Deciding upon an option to address the policy problem

What scope will options be considered within?

614. During public consultation, we tested an additional option: to enable the use of body temperature scanners on entry to prison for prisoners and staff. We have now narrowed down our scope of options to consider either creating the power to use body temperature scanners only on prisoners, or the power to use them on anyone who enters a prison including prisoners, staff, and visitors.

What options are being considered?

Option One – status quo

615. Authority for the use of body temperature scanners would remain unchanged. They are no longer being used as a response to the COVID-19 pandemic but we consider it is appropriate to use them again in an emergency situation, for example, if a new COVID-19 variant emerged and/or cases increased significantly.

Option Two – enable the use of body temperature scanners on entry to prison for prisoners when there is a necessary and justifiable health risk

616. A specific statutory power would be implemented in the Act allowing Corrections to activate, where necessary and justified such as at the height of a COVID-19 outbreak, mandatory body temperature scanning for prisoners when they enter or re-enter a prison. Body temperature scanners would only be able to be used where there was a justifiable health reason for doing so, such as a regional outbreak of an infectious disease such as COVID-19, and would need to be authorised by the Prison Manager. Where a risk of death or severe illness is present, and/or where the prison population has specific vulnerabilities, the scanner's use would be warranted. The body temperature image would be deleted after no more than an hour.

Option Three – enable the use of body temperature scanners on entry to prison for prisoners, staff members, and visitors when there is a justified health risk

617. As for Option Two, a specific statutory power would be implemented in the Act. This option would allow for body temperature scanners to be used on prisoners, staff members, and visitors upon entry and re-entry to prisons, where there is a justified health risk and their use is approved by a Prison Manager. This option would also state that people other than prisoners are able to refuse a scan, but could be refused access to the prison where they do refuse (this would not apply to statutory visitors such as the Ombudsman, and the New Zealand Parole Board who have rights to enter prisons).

618. Work is also underway to further address some of the privacy concerns that were raised by submitters relating to the image being private health data. We propose that the legislation require the image to be deleted after no more than an hour, which is current operational practice, so possible to implement.

619. Corrections' Chief Privacy Officer has noted that images taken by the scanner are not currently stored, but remain on the screen until the next image is taken with the maximum amount of time an image will remain on the screen being one hour. (We note that this image is much less invasive of personal privacy than the body imaging scans

discussed in Section F and we have not provided a full options analysis for the question of the timeframe the image is held.)

How do the options compare to the status quo/counterfactual?

Problem G: The current legislative authority for the use of body temperature scanners is unclear

	Option One – status quo	Option Two – enable the use of body temperature scanners on entry to prison for prisoners when there is a necessary and justifiable health risk	Option Three – enable the use of body temperature scanners on entry to prison for prisoners, staff, and visitors when there is a justified health risk
Complies with human rights obligations	0	+ Better aligns with s 21 of NZBORA by clearly defining Corrections' power to use body temperature scanners in statute, and only when there is a justified health risk and where approved by a Prison Manager.	+ Same as for Option Two, but staff and visitors may question the infringement on their rights differently than for prisoners who are compelled to submit to prison rules.
Transparency and accountability	0	+ Provides clear legislative power and boundaries for the use of body temperature scanners.	+ Same as for Option Two.
Practical to implement and resilient	0	++ Relatively simple to implement operationally, as body temperature scanners have already been used in prisons as a response to COVID-19. Provides a resilient and durable authority for the use of body temperature scanners on prisoners.	+ Same as for Option Two, but with some additional operational processes in place to cover staff and visitors.
Contributes to better outcomes for Māori	0	+ Māori in prison have significantly more complex health needs than non-Māori and as such would benefit most from the protection that body temperature scanners would offer by reducing the chances that an infectious disease is introduced to prison.	++ Same as for Option Two, however, this option offers greater protection as everyone entering a prison will be scanned rather than only prisoners.
Supports oranga/wellbeing of people in our management	0	+ Protects wellbeing by allowing the use of body temperature scanners where there is a justifiable health risk. However, the impact is limited as scanners can only be used on prisoners, and not on staff and visitors.	++ Best protects wellbeing of staff, prisoners, and visitors by comprehensively reducing the chances of disease entering a prison, where there is a justifiable health risk.
Contributes to safety	0	+ Enables Corrections to support the safety of prisoners, visitors and staff by being able to prevent the spread of disease by detecting raised temperatures, although to a lesser extent than for Option Three as only prisoners will be scanned.	++ Best contributes to safety by providing comprehensive coverage and ability to prevent diseases of which raised temperatures are a symptom from entering prisons where there is a justifiable health risk.
Overall assessment	0	+ This option compares favourably against the status quo because it would help protect the health, safety, and wellbeing of prisoners and would be straightforward to implement. However, there are greater benefits attached to Option Three.	++ This is also an improvement on the status quo like Option Two and because it has wider coverage will be more effective at preventing contagious diseases that can be detected through temperature scanning (such as influenza) entering prisons. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem G: The current legislative authority for the use of body temperature scanners is unclear

620. The preferred option is Option Three, as this would best protect the health of prisoners by enabling the use of body temperature scanners on entry to prisons for prisoners, staff members, and visitors. This would support the prevention of diseases of which a high temperature is a symptom circulating in prison, amongst prisoners who have greater health vulnerabilities, than the general population and especially amongst Māori who have the highest co-morbidities among prisoners.

621. This option also puts appropriate safeguards in place against unreasonable use of this search power by only enabling use of the scanners where there is a justifiable health risk and approval from the Prison Manager. Prison Managers will be supported to record the decision to use the scanners in writing and explain that they consider that the scanner use is a justified impact on human rights compared to the risk of the disease. The COVID-19 pandemic will be used as a case study in practice guidance, where the risk of severe disease and death existed in the prison environment with its vulnerable populations thereby justifying the use of the scanners.

622. Option Three also best reflects much of the feedback we received during our public consultation. It will ensure that the use of body temperature scanners is clearly authorised, and will be a non-invasive, simple way to keep staff, visitors, and prisoners safe in an environment where diseases such as influenza can spread easily and where people are more likely to have underlying health vulnerabilities.

What are the marginal costs and benefits of the option?

Problem G: The current legislative authority for the use of body temperature scanners is unclear

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	Prisoners who return a high body temperature may need to be separated from the general prison population while it is determined if they are unwell.	Low	Medium Based on Corrections' experience using the scanners during the COVID-19 pandemic.
Department of Corrections, including staff	There are costs associated with staff training on using the equipment and updating guidance for staff about which diseases can be detected via temperature scanning. These will be covered by baseline funding. Oversight processes will need to be put in place.	Low	Medium This is based on Corrections' experience using the scanners during the COVID-19 pandemic.

Friends and whānau of prisoners and other visitors	When visiting prisoners, there will be some delays entering prisons where scanners are used. People may also be refused entry if they have a raised temperature. Body temperature scanners would only be used where there was a justifiable health reason for doing so and we anticipate that they will be used rarely.	Low	Medium This is based on Corrections' experience using the scanners during the COVID-19 pandemic.
Total monetised costs			
Non-monetised costs		*Low*	*Medium*
Additional benefits of the preferred option compared to taking no action			
Prisoners	There would be less risk of viruses and diseases entering and spreading across the prison population.	Low	Low Corrections does not have data on the number of people who had high temperatures detected via the scanners during the COVID-19 outbreak.
Department of Corrections, including staff	Corrections and staff would benefit from the lower risk of viruses and diseases entering the workplace.	Low	Low As above
Friends and whānau of prisoners and other visitors	There would be some benefit from knowing that prisoners are safer, and that they are less likely to come into contact with a virus or disease, when visiting someone in prison.	Low	Low As above
Total monetised benefits			
Non-monetised benefits		*Low*	*Low*

Delivering the option

Problem G: The current legislative authority for the use of body temperature scanners is unclear

How will the new arrangements be implemented?

623. Corrections already has body temperature scanners, but is not currently using them and has guidance used during COVID-19 that it can adapt to future needs. When needed that guidance would be updated and provided to Prison Managers and their staff.

624. Guidance and processes will also need to be developed for Prison Managers to understand when the threshold of a 'justifiable health risk' may be met and they are able to authorise the use of body temperature scanners. While influenza circulates in communities every winter, it is unlikely to be appropriate to scan people entering prison unless there is a significant outbreak such as has occurred with COVID-19.

625. Work is currently being undertaken for standard Corrections password protocols and screensaver protections to be implemented for the computers that record body temperature scans. This will ensure that no images remain visible on the computer screens to protect people's privacy as this is personal health data.

How will the new arrangements be monitored, evaluated, and reviewed?

626. The health and custodial teams will jointly oversee any use of these scanners in consultation with the Chief Privacy Officer. During the COVID-19 pandemic, the collection of private health data was limited, which will impact the effectiveness of understanding the impacts of body temperature scanning.

627. We can still, nevertheless, assess how often sites use them, costs, and impacts on visitor, prisoner, and staff relationships. This could include requiring staff to record how often people are prevented from entering prison due to a high body temperature, during periods which the scanners are in use. As they are likely to be seldom used, our review period should be over a matter of years, such as a five-year period. We may find that the scanners are not used again until an exceptional pandemic occurs again, but we will be prepared with the legislative power for that use.

Section H: Case management plans

What is the context behind the policy problem and how is the status quo expected to develop?

628. The purpose of case management plans is to record an individual plan to support the rehabilitation, release, and reintegration of prisoners. Section 51 of the Act outlines what a case management plan must contain. This includes information relating to the prisoner's time in prison and information relating to their release.[62] Section 51 also states who a case management plan must be made for.

629. There is also international guidance on the creation of case management plans. Rule 94 of the Mandela Rules states that as soon as possible after admission, a programme of treatment shall be prepared for a prisoner. Rule 107 also notes that from the beginning of a prisoner's sentence, consideration shall be given to their future after release.

What is the policy problem or opportunity?

Problem H: our current approach to case management plans does not support Corrections to address people's needs in a timely and proportionate way when they enter prison, or during their time in prison

630. Legislation is currently very prescriptive in terms of when a case management plan must be drafted, and what it must contain. This is limiting the developing of best practice operationally, as operational practice is shifting towards a model of a release plan and reintegration plan to be developed within different timeframes. Operational practice will soon guide frontline staff to draft two separate plans which together constitute the offender's management plan. The first of these is the 'release plan' which is drafted within a week of a prisoner's entry and contains information on the prisoner's release location, their support person, a list of reintegration needs, and a plan for their release that extends to 72 hours following their release. The second plan is the 'offender plan', which is drafted following the placement of the prisoner, and ideally within 30 days of them entering the prison. This details the prisoner's needs, including rehabilitation and cultural needs that have been scheduled, planned employment training, and education programme information.

631. The Act requires case management plans to be developed for prisoners sentenced to imprisonment for more than two months, or prisoners who are on remand for more than two continuous months. While this does not prevent Case Managers from developing case management plans earlier, it means that there may be inconsistency around whether people who are in prison for less than two months will have a plan developed for them. It is important that we have the ability to address the needs of prisoners where appropriate in a timely way.

632. The majority of prisoners remanded in custody are released between seven and 21 days and this means that no plan is required to be created for them. In 2020 to 2021, for example, on average each month there were 8900 prisoners, while throughout the year 16,800 people cycled in and out of prison. The majority of these 16,800 prisoners would not have had a case management plan created for them.

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[62] *Corrections Act 2004*, s 51(4).

633. Legislation also requires that case management plans be reviewed at 'regular intervals' and the interval is not defined. This creates operational inefficiency and inconsistent practice.

634. During our public consultation on this issue, the majority of submissions agreed that Corrections' approach to case management needs to be flexible so that the individual needs of prisoners can be addressed. The New Zealand Parole Board noted that it may not be beneficial to focus on release plans for prisoners too early on in their sentence, as circumstances may change. However, rehabilitation and reintegration plans should be addressed early on in the prisoner's sentence. Many submissions also noted that we need to ensure that prisoner needs are at the forefront of case management plans.

What objectives are sought in relation to the policy problem?

635. Our objective is to ensure that case management plans support the most effective rehabilitation and reintegration outcomes for prisoners and enable future improvements in how we deliver this core service for prisoners.

636. The criteria used to analyse the options supports our understanding of the objectives in the following ways:

Criterion	Objective/Consideration
Complies with human rights obligations	Complies with international obligations, such as requirements in the Mandela rules to develop a programme of treatment for prisoners and gives consideration to their release.
Transparency and accountability	Ensures that we have transparent requirements in legislation for case management plans.
Practical to implement and responsive	Practical for Corrections to implement and responsive to changes in best practice over time.
Contributes to better outcomes for Māori	Ensures that Māori are supported to have their needs met.
Supports oranga/wellbeing of the people we manage	Allows case management plans to be developed in a manner that best supports the individuals we manage.
Contributes to safety	Supports prisoners with their rehabilitation and reintegration needs, which will support safer prison environments and support public safety upon release from prison.

Deciding upon an option to address the policy problem

Problem H: our current approach to case management plans does not support Corrections to address people's needs in a timely and proportionate way when they enter prison, or during their time in prison

What scope will options be considered within?

637. Our consideration of options has focussed solely on amending the case management plan provisions. We considered removing them completely so that the Act would be silent, but consider that as these are the fundamental support for a prisoner in accessing rehabilitation programmes and reintegration supports, it should be detailed in the legislation. We also wish to ensure we align with international obligations such as the Mandela Rules.

What options are being considered?

Option One – status quo

638. No changes are made to case management plans. Case management plans are required for those sentenced to imprisonment for over two months, or who are in custody for more than two continuous months on remand.

Option Two – enable operational best practice to evolve by placing requirements for case management plans in Regulations

639. The Act would retain high level requirements to develop a case management plan for every prisoner, with details outlined in the Regulations where needed. For example, at this time best practice suggests that the Regulations would have requirements to develop a reintegration and wellbeing plan within one week of someone being received into a prison, and a rehabilitation plan for post-conviction, to be added within one month (as outlined in Option Three).

Option Three – split case management plans into a reintegration plan and rehabilitation plan in the Act

640. The current legislative outline of management plans would be amended to require a reintegration plan, and a rehabilitation plan to be developed within specific timeframes, each with a specific and relatively independent purpose. The Act would not contain specific details as to what the plan entails to enable the plan to be tailored to the prisoner's needs.

How do the options compare to the status quo/counterfactual?

Problem H: our current approach to case management plans does not support Corrections to address people's needs in a timely and proportionate way when they enter prison, or during their time in prison

	Option One – status quo	Option Two – enable operational best practice to evolve by placing requirements for case management plans in Regulations	Option Three – split case management plans into a reintegration plan and rehabilitation plan in the Act
Complies with human rights obligations	0	+ Better aligns with Mandela Rule 94 that as soon as possible after admission, a programme of treatment shall be prepared for the prisoner and Rule 107 that from the beginning of a prisoner's sentence, consideration shall be given to their future after release.	+ As for Option Two.
Transparency and accountability	0	0 No change. Continues to have legislative backing for this critical tool for rehabilitation and reintegration.	0 No change and same as for Option Two.
Practical to implement and resilient	0	++ This option aligns legislation and regulations with existing operational practice. Will be more resilient as it will be more efficient to amend case management best practice in the future through regulatory changes.	0 This is already being done operationally and this option would align legislation with best practice. Supports a greater proportion of prisoners to have access to plans developed by case management staff, which will contribute to a more durable environment into the future. Less resilient as the legislation will remain prescriptive and less able to adapt as best practice evolves compared to Option Two.
Contributes to better outcomes for Māori	0	+ Will enable Corrections to consider how Māori needs can best be met when Regulations are updated so that equitable outcomes are achieved.	0 No change.
Supports oranga/wellbeing of people in our management	0	++ This allows plans to be better tailored to achieve individual outcomes, which should benefit wellbeing.	+ This allows plans to be better tailored to achieve individual outcomes more than the status quo, but less than Option Two.
Contributes to safety	0	+ Contributes to the rehabilitation of prisoners, which will contribute to public safety once they are released from prison.	+ Same as for Option Two.
Overall assessment	0	+ This option is the most practical to implement and more resilient as only high-level principles will remain in the Act, with more detail being placed in the Regulations. It also will allow operational practice to develop that is more in line with the Mandela Rules and to better support the wellbeing of prisoners. (Recommended option)	+ This option would support human rights obligations and the wellbeing prisoners, while aligning with the purposes and principles of the Act, but it does not carry the same benefits as Option Two.

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem H: our current approach to case management plans does not support Corrections to address people's needs in a timely and proportionate way when they enter prison, or during their time in prison

641. Corrections' preferred option is Option Two, to provide for a more flexible approach in the wording of the requirements for case management plans in the Act.

642. While Option Two and Three provide for similar outcomes in relation to transparency and accountability and the wellbeing of people in our management, Option Two is the most practical to implement and resilient. This is because only high-level requirements will remain in the Act, with more detail being placed in the Regulations. This will strike the balance between requirements remaining transparent in primary legislation but increasing flexibility, as the Regulations will be easier to amend in future as best-practice evolves.

643. To address the issue of inflexibility, the primary goal is to allow two distinct stages of planning to occur as part of the management plan process. Operational practice has continued to evolve, while the legislative outline for management plans has remained static. Amending our existing framework to allow flexibility to reflect this is a relatively simple option, and does not require a complicated rebuild of the planning process. This means there will be more benefits and fewer costs compared with other options.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	No direct costs.	N/A	N/A
Department of Corrections, including staff	Corrections would need to develop guidance, train Case Managers and send communications to staff across the prison network. These costs form part of business as usual activity and would be funded from within baselines.	Low	Medium Based on experience providing training and guidance to Case Managers.
External community (e.g., service providers, employers for temporary release, and whānau)	Some external groups who provide input to case management plans, such as housing providers, may need to adjust to changes in processes, such as when plans need to be completed by.	Low	Medium
Total monetised costs			
Non-monetised costs		*Low*	*Medium*
Additional benefits of the preferred option compared to taking no action			
Prisoners	Prisoners would benefit from more tailored plans that are more responsive to their needs.	Medium	Medium Based on an understanding of

			how case management plans support prisoners.
Department of Corrections, including staff	Staff would benefit from being able to provide better options to prisoners.	Medium	Medium
External community (e.g., service providers, employers for temporary release, and whānau)	May see more tailored and timely service and programme planning for prisoners.	Low	Medium
Total monetised benefits			
Non-monetised benefits		*Medium*	*Medium*

Delivering the option

Problem H: our current approach to case management plans does not support Corrections to address people's needs in a timely and proportionate way when they enter prison, or during their time in prison

How will the new arrangements be implemented?

644. The intention of this change is to align legislation with best practice, as operationally, planning is already being conducted in a way that splits parts of the case management plan into different stages. As such, no immediate changes will be required to practice, but guidance based on older settings will require updating.

645. Following amendments to the Act, changes to the Regulations will be needed to specify requirements for case management plans before the new approach can be implemented fully.

646. When implementing the regulations, this will involve deciding on what information is included in the regulations. This may include, for example, clarification on the timeframes at which case management plans must be reviewed, following a prisoner entering prison and prior to their release. Currently, the Act does not specify what constitutes a 'regular interval.'

How will the new arrangements be monitored, evaluated, and reviewed?

647. We will conduct a practice review of the new changes approximately 12 months after they are implemented (timing for all reviews and evaluations are discussed in the final section of this RIS). This would involve reviewing the plan with case managers and probation officers. We would want to compare the timeliness of the plans under the change with the existing process, and review the new plans against the old plans to see if the content is changing and will achieve better outcomes for prisoners and how these are delivering for Māori.

Section I: Information sharing with Inland Revenue

Problem I: A secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

What is the context behind the policy problem and how is the status quo expected to develop?

648. Information on the prison population is needed on a regular and ongoing basis by Inland Revenue (IR) to undertake activities such as:

- pausing child support repayments for prisoners who are in prison for more than 13 weeks
- ensuring those with student loans are not incorrectly identified as residing overseas, and
- to assist with detecting fraud.

What is the policy problem or opportunity?

649. Currently, IR accesses this information through repeated scheduled requests under section 17B of the Tax Administration Act 1994, which allows the Commissioner of IR to request information relevant to the administration or enforcement of an Inland Revenue Act (such as the Income Tax Act 2007). However, continuing to use this mechanism is administratively burdensome and not in line with its legislative intent, which is for it to be used for ad hoc requests.

650. The Privacy Commissioner has advised that this practice may not be sustainable and appropriate in the future as it does not provide robust privacy safeguards and section 17B was not intended for ongoing information requests.

651. During our public consultation on this issue, submitters including the Office of the Privacy Commissioner supported a robust information sharing mechanism between Corrections and IR.

What objectives are sought in relation to the policy problem?

652. Our objective is to ensure resilient information sharing to promote positive outcomes for prisoners in ways that protect their privacy.

653. This objective will inform the criteria in the options analysis below in the following ways:

Criterion	Objective/Consideration
Complies with human rights obligations	Complies with the Privacy Act and no more information is shared than is necessary.
Transparency and accountability	Ensuring there is a formal and publicly accessible document which outlines an information sharing mechanism.
Practical to implement and responsive	Practical for Corrections and IR to implement and responsive to changes in best practice over time.
Contributes to better outcomes for Māori	Ensures that data, which can be taonga, is treated with respect.

Supports oranga/wellbeing of the people we manage	Contributes to the wellbeing of the people in our care.
Contributes to safety	N/A

Deciding upon an option to address the policy problem

Problem I: A secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

What options are being considered?

Option One – status quo

654. IR will continue to obtain information from Corrections through the repeated use of section 17B of the Tax Administration Act 1994.

Option Two – implement an Approved Information Sharing Agreement with Inland Revenue

655. This option is to develop an Approved Information Sharing Agreement (AISA) under the Privacy Act.

656. For an AISA to be approved it must demonstrate that it will enable the provision of better public services, alongside evidence of a strong cost benefit for its establishment.

Option Three – implement an information disclosure power within the Act including appropriate protections for people's privacy, and seek a Memorandum of Understanding between Inland Revenue and Corrections

657. This option is to amend the Act to add an information disclosure power, providing a basis for ongoing information sharing with IR. A Memorandum of Understanding (MOU) would then be developed between both agencies, outlining how information is to be shared in the future.

658. This amendment would define the purposes for which information can be shared, the types of information to be shared, requirements for access and any other relevant safeguards. This aligns with existing information sharing powers in the Act, for example, for Corrections to share information with the Ministry for Social Development.

Feedback from public consultation was mixed on the best option for change

659. The Office of the Privacy Commissioner recommended the development of an AISA. The Law Society noted that an MOU would be a better option because it is less labour intensive. During previous discussions with IR, they also noted that their preferred option would be legislative change and an MOU.

How do the options compare to the status quo/counterfactual?

Problem I: A secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

	Option One – status quo	Option Two – establish an Approved Information Sharing Agreement with Inland Revenue	Option Three – amend the Act and develop a Memorandum of Understanding
Complies with human rights obligations	0	+ Better complies with the Privacy Act than the status quo and ensures people's private information is only shared where necessary, and where it is managed securely.	+ See Option Two.
Transparency and accountability	0	+ An AISA between Corrections and IR would provide a formal and publicly accessible document outlining information sharing under a formal mechanism. This would improve both transparency and accountability.	+ Implementing information disclosure powers into the Act and establishing a MoU with IR based on this, would provide a formal and publicly accessible document that outlines information sharing under a recognised mechanism. This would both improve transparency and accountability.
Practical to implement and resilient	0	++ The establishment of an AISA requires a comprehensive programme of work that seeks to prove the value of an AISA in this area. If successful, the agreement is established via an Order in Council. Digital infrastructure must also be established to facilitate the exchange of information between the two parties. An AISA would provide a stable and durable arrangement to share information with IR. The terms of exchange would be clearly defined under a reliable and well understood model, backed by a legislative instrument that is equipped to last into the future.	++ Legislative change and an MoU between Corrections and IR would provide a reliable instrument for ongoing information sharing. As for Option Two, this option would provide a stable and durable arrangement to share information with IR. An MOU will be resilient as it can be more easily amended in future.
Contributes to better outcomes for Māori	0	+ Questions of Māori data sovereignty can be examined when implementing this option. Personal data can be taonga and this option will ensure it is treated with respect.	+ Same as for Option Two but these issues can be examined as the MOU is negotiated.
Supports oranga/wellbeing of people in our management	0	0 As for status quo.	0 As for status quo.
Contributes to safety	0	0 As for status quo.	0 As for status quo.
Overall assessment	0	+ This option provides greater transparency and accountability than the status quo and better aligns with the Privacy Act. However, it has less long-term certainty than legislative change.	+ This option is preferred as legislation will improve transparency and accountability of information sharing in the longer term, and will be effective and future focussed. (Recommended option)

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

Problem I: A secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

660. Corrections' preferred option is Option Three, to amend the Act to enable information sharing with IR and develop an MOU to support its operationalisation.

661. While either Option Two or Three could be appropriate in this situation, Option Three gives greater certainty to the sharing of information in the long term. As legislation is not likely to be in place until 2024 or 2025 it will take longer than an AISA to get in place, but the legislative process provides more scrutiny of the mechanism and longer-term certainty, as it is less likely to be changed. The initial negotiation phases of an MOU could happen in parallel to legislative processes. An MOU will also be easier to amend in future compared to an AISA, which requires changes to be made via an Order in Council, so Option Three will be more resilient over time. An AISA does have more safeguards because it is able to be amended via the Order in Council process, but this also means an MOU is easier to implement.

What are the marginal costs and benefits of the option?

Affected groups	Comment	Impact	Evidence Certainty
Additional costs of the preferred option compared to taking no action			
Prisoners	There is no material cost to prisoners.	N/A	N/A
Department of Corrections, including staff	There are comparatively minor implementation costs for establishing processes, and developing the MOU. These costs would be met within baseline funding as they form part of business-as-usual activity.	Low	Medium Based on experience developing other MOUs.
Inland Revenue	There are implementation costs (as above) for establishing processes and developing the MOU.	Low	Medium As above.
Whānau and wider community	Some families may be impacted as child support payment obligations will be paused for people who are in prison. This is not a policy change and IR is already accessing information about the prison population through ongoing information requests to Corrections.	Low	Medium Based on information sharing that is already taking place.
Total monetised costs			
Non-monetised costs		*Low*	*Low*
Additional benefits of the preferred option compared to taking no action			

Prisoners	Prisoners would have assurance that their privacy is well protected, through legislative requirements. As data is shared with IR, there would be assurance that prisoners are not subject to fees or payment obligations that can be paused for prisoners.	Low	Medium Based on current information sharing under s17B of the Tax Administration Act.
Department of Corrections, including staff	Corrections will be able to put in place future focused processes that will be less administratively burdensome than the current s17B information requests.	Low	Medium
Inland Revenue	IR will be able to put in place future focused processes that will be less administratively burdensome than the current s17B information requests.	Low	Medium
Whānau and wider community	Effected families can know that a prisoner is not accumulating debt, for example through child support repayment obligations that are able to be paused while in prison.	Low	Medium
Total monetised benefits			
Non-monetised benefits		*Low*	*Medium*

Delivering the option

How will the new arrangements be implemented?

Problem I: A secure information sharing agreement is needed to provide ongoing access to information held by Corrections to Inland Revenue

662. Following amendment of the Act, Corrections and IR will work together to develop a MOU setting out what information can be shared between the two agencies and how it can be used.

663. System and process changes will also be needed. These include updating record keeping including Child Support address files, exemption files, and amending letter systems and processes. These costs are expected to be minor and met within existing baselines.

How will the new arrangements be monitored, evaluated, and reviewed?

664. No more than six months after the changes come into effect (likely after the MOU is in place) we would work with IR to review the effectiveness of the exchange of data taking place. This includes the volume and type, and to ensure that privacy requirements are being met. As a digital solution may be required we will need ongoing reviews of its effectiveness.

Summary of implementation for all proposals

How will the new arrangements be implemented?

665. Across the nine areas for change analysed in this RIS, there will be similar aspects of implementation that will need to occur.

666. The main change required will be to operational guidance as it will need to be updated and the changes communicated to staff in relation to all areas for change. In some cases, additional staff training will also be needed. For the proposal to allow limited mixing of remand accused and convicted, this will initially only be communicated to staff at sites where mixing will be trialled.

667. As noted in each section, we anticipate that in most cases the costs of updating guidance and providing additional training will be covered within baselines. We already have a custodial practice team who are responsible for developing guidance and prisoner communications. As legislative change is not likely to be in place until 2024 or 2025 they have time to schedule the updates to each section of practice guidance into their workplans.

668. Additional training for staff will also be needed as part of implementation changes to monitoring prisoner communications, changes to the disciplinary process, new provisions for improving Māori outcomes, and changes to case management plans. For most of these changes, training will only be required for staff in certain roles, such as Intelligence Officers, Prosecutors and Adjudicators, and Case Managers. For the changes to improve outcomes for Māori, we will identify which staff may require specific training, in addition to general guidance and communications to all staff about the new Corrections principles and other legislative provisions.

669. Several of the changes will need to be communicated to prisoners. This will include developing new signage for prisons, for example to communicate when certain types of communication are subject to monitoring, as is currently the case for phone calls. Existing signage to provide information on the use of body imaging technology and body temperature scanners will also be distributed to additional sites as scanners are introduced. Changes to the disciplinary process will be communicated to all prisoners as well as ensuring that people who are charged with misconduct understand any changes to the process.

670. Where we identify that other groups need to be informed, such as lawyers and visitors to prisons, we will also develop communications material.

671. Other specific aspects of implementation will include:

- assessing potential technology to monitor communications and activity in prison, and trialling these at some sites before the Chief Executive authorises them for use
- reviewing the provision of cultural activities at all prison sites as part of the changes to improve outcomes for Māori
- continuing to develop and implement a health service that is informed by kaupapa Māori approaches and health sector principles
- developing a plan to deliver more mātauranga Māori in prisons as part of education provision, and
- trialling the limited mixing of remand accused and convicted prisoners at certain sites for some programmes, such as Hawke's Bay Māori Pathways.

The total package of proposals will have some ongoing costs as well as significant expected benefits

672. Most of the proposals outlined will not require additional funding, as the costs to implement them will form part of Corrections' business-as-usual activity. The exception is implementing body imaging technology, which will include up to $20,000 travel costs to deliver training to staff and an estimated $4.9 million to purchase new body imaging scanners. However, the scanners will be optional and their purchase and roll out will therefore be phased, depending on funding availability.

673. The total package of proposals will incur opportunity costs, as staff in multiple teams across the organisation will be involved in updating practice guidance, delivering training, and creating and sharing information with staff, prisoners and other stakeholders about the changes. Although this is business-as-usual activity, it will mean that staff will not be working on alternative projects.

674. Many of the proposals also lay the foundation for changes that may incur costs in the future. For example, the legislative provisions to improve outcomes for Māori will create ongoing requirements that will come with costs, such as to develop and maintain a strategy focused on Māori issues and ensure that Māori at all prison sites have opportunities to access cultural activities.

675. Sufficient training and guidance for staff will be necessary to ensure that the proposals to improve outcomes for Māori do not create risks that Corrections will be unable to fulfil new legislative provisions. These changes will require Corrections to work with other agencies and providers, particularly in relation to health and education. In order to reduce risks that Corrections will not be able to improve outcomes in these areas, drafting will provide caveats that new legislative provisions must be met where reasonable and practicable.

676. The proposal to enable the limited mixing of remand accused and convicted prisoners may also create future costs, if more programmes in future are designed around mixing, following trials at certain sites.

677. These proposals are also expected to have significant benefits overall for the corrections system. Changes to monitoring and gathering information and to improve the disciplinary process are expected to increase the safety of staff and prisoners. Improvements to the process for authorising non-lethal weapons will provide assurance that Ministers have the information needed to support robust decision-making in future about authorising any new non-lethal weapons.

678. Legislative requirements to improve outcomes for Māori will support the strategic direction of *Hōkai Rangi* and better support the Crown to meet its te Tiriti responsibilities. Enabling the limited mixing of remand accused and convicted will also enable Corrections to better design programmes around the needs of prisoners. The miscellaneous changes proposed will support best practice operationally and improve the wellbeing of prisoners, for example by enabling the wider use of body imaging technology.

How will the new arrangements be monitored, evaluated, and reviewed?

679. We will phase our reviews of these changes, depending on how long they may take to have an impact following implementation.

680. Within three to six months of being implemented, a practice review of the use of body imaging technology will be carried out at those sites that are using the technology. The

same would happen with Inland Revenue regarding the effectiveness of new information sharing mechanisms.

681. We will develop a plan for reviewing and evaluating changes to the disciplinary process, non-lethal weapons, case management plans, monitoring communications and improving outcomes for Māori after 12 months. These changes will not be able to be reviewed concurrently, but may be staged over one or more years. The way in which they are reviewed will depend on resourcing and funding availability for any external evaluations.

682. A review of disciplinary processes could be completed internally by reviewing the use of suspended penalties and the new incitement offence, to assess how often they are being used and if they are being used consistently and fairly across sites.

683. To review changes to non-lethal weapons, we will aggregate data on use of force incidents involving non-lethal weapons and consider whether any additional changes to guidance or the Regulations are necessary to ensure they are used safely and only where necessary.

684. A review of how the new powers to monitor communications for intelligence purposes are being used could either be completed internally or an independent evaluation could be commissioned, depending on resourcing availability. When completed, the report from this review will be provided to key stakeholders such as the Ombudsman, and Privacy Commissioner, as well as to the Minister.

685. A review of the new legislative provisions to improve outcomes for Māori would aim to assess how these provisions have translated into operational practice and assess any opportunities to make further operational changes to embed the new requirements. Given that many of these changes will take some time to lead to tangible outcomes, this review could be staged to take place later than the reviews of some of the other changes mentioned above.

686. The changes to enable limited mixing will be trialled and then reviewed to assess the benefits shown from mixing in certain situations and to identify any further adjustments needed to operational policy or the legislative framework. These are not expected to be used at all prison sites but will support more innovative service provision over time.

687. Given how infrequently they are expected to be used, a review of body temperature scanners will be completed after five years to determine how often the scanners have been authorised in response to a justified health risk and the costs and impacts that this has had on all prisoners, staff, and prison visitors.

688. Other changes will have ongoing regular reviews, such as ensuring that disciplinary hearings without the person charged in attendance are only occurring where necessary and not impacting natural justice.

Appendices

Appendix One: TEN-R Operational Risk Assessment Tool

TEN-R supports the Assess – Plan – Act process by identifying key factors that must be considered when determining an appropriate response to the situation. This framework is also used by Police.

Threat	This step is about assessing how serious the situation is and the current danger the subject presents to themselves and others. Staff must assess the threat posed based on what they see and hear, and what is known about the subject and situation. This involves conducting a risk assessment based on intent, capability, opportunity, and physical environment.
Exposure	This step is about assessing the potential harm (whether physical or otherwise) to staff and other people, or the security of a facility or equipment. In all instances, assessment and planning can mitigate the degree of exposure. Staff need to understand exposure to harm and damage by considering safety, including self-awareness of capability, and security.
Necessity	This step is about determining if there is a need to intervene immediately, later, or not at all. Staff must consider all tactical options, which may not require the use of force. Taking action must be informed, and supported by a clear assessment of the known threat and exposure involved. Staff must assess the need to proceed with their intended response at that particular time, date, and place, with resources and tactical options available to them. The assessment will determine one of three outcomes: • to proceed with an immediate and unplanned response • to not proceed • to proceed with a delayed and planned response, and • Any option must endeavour to maximise safety and minimise risk.
Response	This step means understanding the threat, exposure, and necessity to determine what response is appropriate on the balance of the information available. The action plan must be based on the threat posed by the subject, their intent, opportunity, and ability to cause harm to staff and others, and assessment of when best to proceed with a response. In some instances, there may be a need to delay action until resources or equipment is available. Caution is not cowardice and there may be good reason to cordon and contain the subject while awaiting the arrival of support, such as Advanced Control and Restraint, Prison Negotiators, or other specialist services. In remaining instances, prompt action may be required to prevent further loss or injury. Even in active situations, there must be calculated thinking and decision making supported by robust training and experience.

Appendix Two: Operational guidance on pre and post pepper spray use

Before either planned or spontaneous pepper spray use staff must consider whether there are other options which would resolve the situation safely, and whether the use of force is reasonable, necessary and proportionate in the circumstances. Staff are trained on how to make a subjective assessment which is based on these three principles, all of which must be present for the use of force to be lawful. This also is in line with the requirements in the Act that the use of force must be reasonably necessary in the circumstances.

Before planned use, a staff member must seek prior authorisation for the use of pepper spray from the Prison Manager, or they may seek approval from another trained staff member if it is not practical to seek authorisation from the Prison Manager. If use is planned, a decontamination area must be set up in advance and a member of the health team must be close by to assist. Staff should also check whether a person has any conditions that may cause an adverse reaction to pepper spray, such as cardiac or respiratory conditions, or allergies.

As soon as possible after use, staff must check the person's breathing and follow decontamination procedures. A person who has been exposed to pepper spray must not be left lying face down with their hands restrained behind them. The person must be seen by a member of the health team as soon as reasonably practicable, but within three hours. The person must also be interviewed within three hours of the incident to identify any other support needs they may have. In contrast to this, the Police Manual only requires medical attention to be given to a person when they have experienced effects for longer than 45 minutes, or where there are wellbeing concerns.

Whether the incident takes place during the day or night, it must be reported to the incident line. This is then followed by a written report, and the Prison Manager and regional commissioner must be informed within two hours. The Prison Manager must also assign a delegate to review the incident as soon as possible, and this must be done within 24 hours. The delegate may be any trained staff member, and the purpose of the review is to determine whether the use of pepper spray was appropriate in the circumstances. Any video footage of the incident must be retained and provided to national office within 3 days of the incident.

Appendix Three: guidance on the use of Batons

Authority for policy

- Corrections Act 2004, Sections 83-85, 88.
- Corrections Regulations 2005, Regulations 120-123, 128-129.

Approved baton

The Chief Executive of the Department of Corrections has approved the following type of baton for Corrections Services:

24 inch side handle aluminium baton manufactured by AETCO incorporated (USA) and supplied by Tactical Solutions Corporation.

Criteria for issuing batons

- The Prison Manager is responsible for issuing batons to advanced control and restraint (ACR) member(s) if he or she reasonably believes that all of the following conditions apply:
- there is a serious threat to prison security or to the safety of any person
- the use of the side handle baton will reduce or eliminate the serious threat
- other means of reducing or eliminating the serious threat have been or are likely to be ineffective.

The Prison Manager may also authorise the issuing of batons to ACR members for training purposes to maintain competency levels.

Restrictions on carrying batons

Only an ACR member can carry a baton if:

- the baton was issued at the direction of the Prison Manager or delegated authority; and
- they are certified by Corrections Services in the use of the side handle baton.
- ACR member(s) must not carry a department baton outside prison property, unless required to respond to an incident at another prison site, or for training purposes.

Note: Security contractors and corrections staff not appointed to the role of ACR are not authorised to carry or use a baton.

Use of Batons

ACR members who have been issued with a baton may draw and use the baton only if approval by the Prison Manager has been obtained as part of the intervention plan, unless it is impracticable in the circumstance.

ACR member(s) must use the baton in a way that:

- is consistent with the training delivered by Corrections Services; and
- minimises the pain or injury to the prisoner, insofar as it is consistent with protecting prison security or the safety of any person.
- Batons are not to be used outside a prison for any reason other than for training purposes.

Storage of Batons

The Prison Manager must ensure that the batons are:

- securely stored at all times, except when they have been issued to ACR members

- accounted for at all times by way of an accurate record of when they have been issued and
- returned in good condition.

Reporting on the use of batons

ACR members who use a baton on a prisoner under any circumstances must promptly report the incident as required in the POM Incident response / reporting.

All incident reports must include the following information:

- date, time, and location where the baton was used when responding to an incident
- name of the prisoner(s) involved (where possible)
- names of all staff members or others (contractors) involved
- name of the person who approved the issuing and use of the baton
- circumstances leading up to the use of the baton that justified its use
- type of behaviour displayed by the prisoner(s)
- strategies used by staff members to de-escalate the situation (if applicable)
- location on the prisoner's body indicating where the prisoner was struck with the baton (where possible)
- date and time of the prisoner's examination by a registered health professional
- outcome of the incident, including the details of any injuries to any persons.

The POM IR.05.Form.03 Report on the use of force - use of non-lethal weapon must be completed as soon as practical.

Initial training

All ACR members must receive training in the use of the baton as soon as practicable, but no longer than three months after appointment to the ACR team. The initial training must be completed by a certified Corrections Services baton instructor in the use of the baton.

Refresher training

ACR members trained to use the side handle baton must undergo refresher training in the use of the side handle baton at least once a year.

Refresher training will be completed by a certified Corrections Services baton instructor.

Corrections Services baton instructors must be recertified by New Zealand Police once every 5 years. The emergency preparedness manager will be responsible for ensuring Corrections

Services baton instructors are recertified as and when required.

Damaged batons

If the prison requires additional baton(s) due to damage, the emergency preparedness manager must be contacted in the first instance. The emergency preparedness manager will be responsible for the procurement of additional batons as and when required.

Disposal of batons

The emergency preparedness manager will be responsible for the disposal of the baton. The disposal of the baton must be completed in a manner whereby it cannot be used by any other persons.

Appendix Four: key components of incident response for uses of force

The diagram below provides an outline of the incident response guidance for Use of Force as set out in the Prison Operations Manual.

IR.02.06 Spontaneous use of force

- A staff member who uses force or officer who uses individual carry pepper spray (ICP) on a prisoner in any circumstances must promptly report the use of force / pepper spray to the prison manager (IOMS incident reporting).
- Staff must advise the unit PCO or on-call manager as soon as possible following the incident (the prison manager and Regional Commissioner must also be advised within two hours of the incident occurring).

IR.05.04 Incident debrief meetings

- A team debrief must occur as soon as practicable but within 24 hours

IR.05.01 – Initial Post Control and Restraint

- Officer in charge of the incident must immediately advise the prison manager, on-call officer or supervision officer immediately following incidents where use of force has been used
  - IR.05.Form.03 Report completed
- The prison manager is informed of internal (prison) incident details and must approve the initial follow-up actions (e.g. immediate needs and placement).
- Contact Health Centre (Assessment as soon as practicable and within 3 hours)
- IR.05.Form.01 Debrief report (to CSM within 3 days/72 Hours)
- IR.05.Form.02 Notice of the use of mechanical restraints (report to VJ as soon as practicable)
- IR.05.Form.03 Report on the use of force – use of non-lethal weapon (to be sent to UofF@corrections.govt.nz as soon as practicable)
- OBC & CCTYV footage to National Office within 3 working days of the incident
-

IR.05.07 Post Incident Review

- All C&R and spontaneous Use of Force incidents, including individual carry pepper spray are to be reviewed as soon as possible after the incident.
- This review is to be carried out by an officer nominated by the prison manager to consider whether the situation was handled in the most appropriate way, what led to the situation, and what strategies need to be put in place to avoid future situations that lead to the use of force.
- The depth of any such review should reflect the seriousness of the incident, but should in any case cover not only the use of force itself and the outcome, but also what led to the incident, and what steps were taken to avoid the use of force (negotiation etc).
- Each incident is investigated by prison management as soon as is practical after it has occurred, and the results of the investigation documented and reported
- For internal (prison) incidents, the incident follow-up report is forwarded to the regional commissioner for approval of planned actions, and to ensure follow up.
- The reviewing officer places a record of findings in the Use of Force Register and informs the prison manager of the findings.
- IR.05.Form.01 Debrief report (to CSM within 3 days/72 Hours)
- IR.05.Form.02 Notice of the use of mechanical restraints (report to VJ as soon as practicable)
- IR.05.Form.03 Report on the use of force – use of non-lethal weapon (to be sent to UofF@corrections.govt.nz as soon as practicable)

IR.05.05 Post incident debrief

- Staff involved in the use of force hold a debrief immediately after each incident.
  - The debriefing manager must place copies of all incident reports and forms on:
    - the relevant staff files
    - the prisoner(s) files, and
    - the Use of Force Register.
- Forward the original Incident reports and forms to the prison manager.

IR.05.08 Use of Force Register

- A Use of force register shall be maintained which contains the details of any incident where any use of force is used, including mechanical restraints and / or control and restraint and requires:
  - Unit PCO / on-call manager's signature
  - Prison manager's signature
  - Reviewing officer's comments
  - Signature of reviewing officer and the date.
- Information recorded in the register includes the name of the person who authorised the use of force, details of the incident, intervention strategies used prior to the use of force, details of the type of force used and the subsequent result.
- The prison manager confirms that all the required steps were implemented and signs the Use of force register to certify that all actions were undertaken within time and in the correct way.

Appendix Five: Extract from Prison Operating Manual relating to prisoner searches of transgender prisoners

I.10.03 Initial personal searches

Key Resources +

1. If the prisoner identifies as trans, discuss what gender of officer they prefer to conduct rub down and strip searches and complete the I.10.Form.01 Confirmation of search choice for trans prisoners.
2. The prisoner's search choice must then be followed; advise the prisoner this does not allow them to choose the staff members who search them. They can complete the form again on request if they change their mind at any time or after a current search or drug test has been completed.
3. If the prisoner refuses to select a search preference they must be searched in line with their gender identity (e.g. a male to female trans woman must be searched by female officers).
4. Any physical differences presented by a trans prisoner must be responded to in a professional and respectful manner, the same as any physical differences due to disability, injury or other reason. If you are unsure how to search a trans prisoner, request additional training and support from your principal corrections officer (PCO) or residential manager.
5. The prisoner may be wearing items to assist them to present in their identified gender. Ask them to remove any items such as prosthetic, chest binders and tape to enable the skin underneath to be seen. Search the removed items as any other item of clothing is searched. Provide sufficient time and privacy for them to replace the items.
6. Address any disruptive, offensive or abusive language or behaviour by a trans prisoner towards you during a search as you would any other prisoner behaving in the same way.

I.10.Form.01 Confirmation of search choice for trans prisoners

To be discussed and completed at the Receiving Office, on request or if a prisoner identifies as trans after being received into custody

This Confirmation of Search Choice has been completed

at _____ [name of prison]

on _____ [date] and the search choice and date noted in the 'Transgender' alert in IOMS.

A. Basic information and search choice

Name on warrant			
Date of birth		PRN	

Assigned sex at birth

What sex were you assigned at birth?

- ☐ Male
- ☐ Female
- ☐ Indeterminate / intersex

Gender identity

How do you describe yourself? *(Select one)*

- ☐ Male
- ☐ Female
- ☐ Trans male / Trans man
- ☐ Trans female / Trans woman
- ☐ Genderqueer / Gender non-binary
- ☐ Different identity (please state):

_____

Search choice

Which gender of Corrections Officer do you select to rub-down, strip search and drug test you? *(Select one)*
(Note: you cannot select individual staff members to search you)

- ☐ Male
- ☐ Female

B. Trans person confirmation of search choice

I, _____ [name of prisoner]

confirm that:

- the process of rub-downs, strip searches and drug tests have been discussed with me, **and**
- I have selected the gender of Corrections Officer who will conduct those searches of me, **and**
- I have been told that I can change my choice by completing another search choice form.

Confidentiality

I have been informed that personal information collected about me for my management in prison will be kept confidential.

I have been informed that no identifying information will be disclosed to any person, within or outside the Department of Corrections, unless the disclosure is required for:

- my management, or
- I specifically consent to the disclosure.

I have been made aware staff who may have access to this information include:

- Medical Officer
- Health Services staff
- Custodial staff
- Other Corrections staff as required.

Signature		Date	

C. Staff witness of search choice

I, _____ [staff member]

confirm that the search processes of rub-downs and strip searches have been explained to the prisoner and they have selected the gender of Corrections Officer who will conduct searches of them.

I confirm that I have told the prisoner that they can change their choice by completing another search choice form.

Signature		Date	

OR

☐ Prisoner refuses to select the gender of Corrections Officer to search them

I, _____ [staff member name]

_____ [designation]

confirm that the searching processes of rub-downs and strip searches have been explained to the prisoner and they have refused to select the gender of Corrections Officer to conduct rub-downs and strip searches of them.

I confirm that they will be searched by Corrections Officers who share their gender identity until they select a preference.

For this prisoner ☐ Male ☐ Female Corrections Officers will conduct those searches.

Signature		Date	